Insurance Counsel Journal

July, 1943

VOL. X NO. 3

PROCEEDINGS AND ADDRESSES

1943 Annual Meeting

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PAT H. EAGER, JR.
President, International Association of Insurance Counsel
1943-1944

President's Page

Just one week ago this morning and at this hour, President Willis Smith was calling to order the 1943 annual convention of the Association at the Edgewater Beach Hotel in Chicago with an excellent attendance of 300 members, ladies and guests.

This morning in the quiet of a holiday office, wafted by a cooling breeze, inspired by the goodbye kiss of a happy, pink-cheeked, chubby little ten months old granddaughter when leaving home, I give thanks unto God for the men who made possible this Independence Day, and the Sacred Document they so ably penned, and to the ever-lasting fulfillment of which, both they and ourselves, have pledged "our lives, our fortunes and our sacred honour."

I acknowledge with deep humility and sincere gratitude the high honor, wholly undeserved, which you have so graciously bestowed upon me and my beloved State of Mississippi. But for the wonderful cooperation of the members of this Association and the help and assistance of the efficient officers and members of the Executive Committee, the task would be beyond my limited ability. I will both need and now most earnestly request your continued help and suggestions at all times.

I wish to express the appreciation and thanks of the Association to Retiring President Willis Smith for one of the finest and most worthwhile programs ever provided. My only regret is that you members who could not attend really do not know what a magnificent program you missed. In addition to business matters, Pat Carey and Mrs. Robert W. Shackleford and their committees provided social entertainment and features par excellence. Make your plans now to attend next year and get the full benefits of the cordial and delightful friendships always existing at our annual conventions, remembering always that this is also the ideal occasion for the wife, and the sons and daughters to be present.

This message must not be concluded without an expression of thanks to Dick Montgomery, retiring Secretary, who refused to be considered for further nomination. He kindly met with the new Executive Committee after adjournment of the annual meeting, and will meet again with the President, Retiring President and our new Secretary, Dave McAlister, to assist in the selection of the many committees for the new year.

You will find in this issue of the Journal the proceedings of the Annual Convention and may I urge you to read the many fine papers, reports and addresses. Of course, you know without my telling you whose continued hard work and devotion makes this and all other issues of the Journal so interesting and so worthwhile—Thanks, George Yancey.

Gratefully and respectfully yours,

PAT H. EAGER, JR., *President.*

Monday, July 5, 1943,
Jackson, Mississippi.

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1943-1944

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PURPOSE

The purpose of this Association shall be to bring into close contact by association and communication lawyers, barristers and solicitors who are residents of the United States of America, or any of its possessions, or of the Dominion of Canada, or of the Republic of Cuba, or of the Republic of Mexico, who are actively engaged wholly or in part in practice of that branch of the law pertaining to the business of insurance in any of its branches, and to Insurance Companies; for the purpose of becoming more efficient in that particular branch of the legal profession, and to better protect and promote the interests of Insurance Companies authorized to do business in the United States or Dominion of Canada or in the Republic of Cuba, or in the Republic of Mexico; to encourage cordial intercourse among such lawyers, barristers and solicitors, and between them and Insurance Companies generally.

Insurance Counsel Journal

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INSURANCE COUNSEL

GEORGE W. YANCEY, *Editor and Manager*
MASSEY BUILDING,
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The Journal welcomes contributions from members and friends, and publishes as many as space will permit. The articles published represent the opinions of the contributors only. Where Committee Reports have received official approval of the Executive Committee it will be so noted.

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Vol. X July, 1943 No. 3

1943 MEETING EDGEWATER BEACH HOTEL CHICAGO, ILL.

All members who were present know that our war time meeting was a tremendous success. Those who were not present and who read the proceedings of the meeting and addresses delivered will be conscious that they missed a really worthwhile meeting.

Willis Smith, who has carried on as President of our Association for the past two years, has given generously of his time and talents to the Association, and has seen to it that the normal functions of the Association have been carried on with efficiency. He provided for our annual meeting an exceptional program—a program which will not be forgotten by the members who were in attendance. Your editor is deeply indebted to him for his cooperation and assistance in securing articles for the Journal. The administration of Willis Smith will ever be a bright spot in the career of Insurance Counsel.

* * *

TO PAT EAGER, OUR PRESIDENT

Pat did not seek or want the job of President of our Association. It came to him in such a way that he could not refuse. Your editor has known Mr. Eager for many years. Pat is the type lawyer and the type man to put all that he has into any job he undertakes. Pat is possessed of all the requirements necessary to give this Association during the next year an enthusiastic and constructive administration. However, he will need your cooperation and assistance. Within the next week or ten days he will make committee appointments and will ask the chairmen and members of the committees appointed to function in their respective fields during the ensuing year. I know that you will be glad to help in the work of the Association.

I am sure all members present at our meeting will join with me in expressing appreciation for the excellent entertainment furnished the members and guests by the entertainment committee, of which Pat Carey was a most active chairman.

* * *

OPEN FORUM DISCUSSIONS CHICAGO MEETING

One of the outstanding features of our Chicago meeting were three open forum discussions, namely, Insurance Aspects of Social Legislation, arranged for and presided over by John E. Johnston of Greenville, South Carolina; the open forum discussion on Practice and Procedure, arranged for and presided over by Wilbur E. Benoy of Columbus, Ohio; and the open forum discussion on Air Transport Insurance, arranged for and presided over by E. Smythe Gambrell of Atlanta, Ga. We are all deeply indebted to the chairmen of the open forum discussions. Judging from a review of the transcript of the proceedings of the discussions and the addresses delivered at the meetings, the chairmen and those who participated gave freely of their talents and time.

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OPEN FORUM DISCUSSIONS TO BE FEATURED IN OCTOBER ISSUE OF INSURANCE COUNSEL JOURNAL

Due to the fact that it is necessary to limit the size of each issue of Insurance Counsel Journal, your editor regrets that he found it impossible to publish in the July issue of the Journal the proceedings of the open forums and addresses delivered at each of these meetings. The October issue of the Journal will feature the open forum proceedings and discussions. Your editor assures you that you have something to look forward to, as these proceedings and discussions are most interesting and informative.

* * *

JOURNAL

Your editor again invites each member of the Association to contribute articles on insurance subjects of interest for publication in the Journal.

PROCEEDINGS

Annual Meeting International Association of Insurance Counsel

EDGEWATER BEACH HOTEL
CHICAGO, ILLINOIS
June 28-29-30, 1943

THE opening session of the 1943 annual meeting of the International Association of Insurance Counsel was called to order at the Edgewater Beach Hotel, Chicago, Illinois, at 10:35 a. m., June 28, President Willis Smith Presiding.

PRESIDENT SMITH: The meeting will now come to order. This Association has three main vices, Mr. Marryott, Mr. Brosmith and Judge Thurman. I will ask them to come and take their seats on the platform. We will proceed with the program, the first item of which is the address of welcome, by Lieutenant Colonel John M. Niehaus, who is now one of our representatives in the armed forces, a man who always attended these conventions in the past and I am sure all of us are delighted that he was so situated, being a resident of Illinois, that he could be with us this morning to offer the address of welcome. Colonel Niehaus. (Applause).

COLONEL NIEHAUS: Mr. President, Mr. George Maurice Morris, President of the American Bar Association, distinguished guests, fellow members of the International Association of Insurance Counsel, ladies and gentlemen:

Before I go further, I want to say that last evening I was in conference with the Governor of Illinois, the Honorable Dwight H. Green. At present, the Governor is extremely busy, as this is the last week of the legislative meeting at Springfield, the Capital. As a fellow Illinois lawyer, he regretted very much that he could not be with you to welcome you here this morning in person. He asked me to extend his regards to you and hope that your deliberations would be effective and far-reaching.

Your President has somewhat emulated another distinguished President, although he comes from North Carolina and this other President was from New England, who is best known to us by his nasal twang in which he said, "I do not choose to run."

That President, like your own President, had very economical ideas. I was not surprised, therefore, to find that policy carried out in this Association. To explain what I mean, you will note that we have only one address of welcome.

It so happens that I am a member of the Peoria Bar Association, a town south of Chicago, and therefore represent the downstate lawyers. I also have the privilege of belonging to the Chicago Bar Association and, to give it a war touch, I am a member of the armed forces of the United States, so, ladies and gentlemen, because of these unique situations, you find in me embodied a welcome from Governor Green, the downstate or country lawyers, the city lawyers, the Chicago Bar Association, the Illinois State Bar Association, the Army, the Navy, the Marines, and, we might add, the Maritime Commission, which bids you welcome here today. (Applause). And I also might add, Mr. President, that as a member of the armed forces, I appear at no cost to you, as I can ride the bus free of charge. (Laughter).

As a native son of Illinois, I am very proud to have the privilege of giving this address of welcome. I am not unmindful of the distinguished gentlemen who have preceded me in previous conventions, attorneys-General and governors of states, and I am very happy, therefore, to be selected on this occasion to welcome you to the great State of Illinois.

While this State is not as old as the original 13, nevertheless it was a part of the Northwest Territory and played a very conspicuous role in the history of our country long before the Revolutionary War. Yes, even when the ancestors of my good friend, Governor Slaton, were picking their home sites in Georgia, Marquette was exploring in a canoe the reaches of the Mississippi and Illinois Rivers, and in 1860, LaSalle built one of his three famous forts, Creve Coeur, at the site of the town of Peoria. Tonti, Joliet and other French explorers traversed this country and 100 years before the Revolutionary War, there were French settlements dotted through what is now Illinois. Then, later came Shawneetown, Cahokia and Vandalia, these towns famous in the early history of Illinois, and

with them came the great explorer, George Rogers Clark.

There is a little couplet that I think is interesting, written incident to the Western part of this state in the neighborhood of Quincy, an old river town on the Father of Waters, which reads like this:

"You may have seen the mighty Thames,
The Tiber or the Liffey,
But I have seen a harvest moon above the Mississippi,
You may have seen a king ride by, with courtiers to adore him,
But I have stood where Clark once stood, with all the West before him."

Shortly after the conclusion of the War of 1812, Illinois was admitted into the Union and has played a conspicuous part in the national history of this country ever since. Such names as Ulysses S. Grant, John A. Logan, Stephen A. Douglas, became famous in his history, and although Grant's tomb is found on Riverside Drive, his home is about 160 miles from here, at Galena, Ill.

Of course, it is with great pride that any son of Illinois records the pertinent fact that out of the two Americans who are famous beyond question in our great history, Washington and Lincoln, one of these men came from Illinois. Old kindly Abe, whose humility and sincerity of purpose, whose homely diction has almost immortalized him around the world, came from Springfield and lies buried there.

Illinois has given the country two Presidents, one Chief Justice, Fuller, who came from this city; Vice Presidents, a score of eminent statesmen and ambassadors, all of whom have played their full part in the molding of the greatest Republic of all time.

Illinois is somewhat unique among states in that it has everything, literally everything. It contains nearly 60,000 square miles, extends 400 miles in length and 300 miles wide at its widest part. It is bounded on one side by the great Mississippi and on the other by Lake Michigan, the Wabash and the Ohio Rivers, and then the mighty Illinois River, traversing the state like a silver carpet, joins Chicago with New Orleans in the famous Lakes-to-the-Gulf Highway.

Primarily a leading agricultural state, it has developed tremendous industry. Through its iron and steel mills and their by-products, machinery of every type and description, agricultural implements, Caterpillar tractors, it provides the nation with some of its greatest manufacturing establishments. Oil and coal are found, along with an abundance of water, all through the State of Illinois. And it might be mentioned to the disturbance of many of my friends here whom I happen to know are opposed to the use of the Demon Rum, that Illinois produces more alcohol and whiskey than any state in the Union.

Its great length provides it with a typical Northern atmosphere in the environs of metropolitan Chicago and a distinctly Southern flavor where it reaches deep into Kentucky and Tennessee. Withal, a great state bids you welcome, the third largest in the Union.

Turning now to Chicago, where we are meeting, we have indeed the phenomenon of one of the great cities of the world. Down on Michigan Avenue, just as you cross the Chicago River at Tribune Tower, there is a plaque on that bridge which records the fact that it is the site of Fort Dearborn, where in 1812 the entire garrison was massacred by the Indians, the women and children were slaughtered, and it, of course, is historically important because it records the fact that Fort Dearborn was practically the only settlement in that year in this particular neighborhood. And yet in a little over 100 years it has grown to be the second largest city in the nation and one of the five largest cities in the whole world.

What a remarkable story of American initiative, of the farsightedness of the American pioneers! And they claim that in another hundred years it will be the largest city in the world.

So much for the history of the place in which we meet. The time in which we meet is even more important. We are gathered today with the nation at war. The very fact that I am in the uniform of our country emphasizes that fact. The nation confronts the greatest fight for its existence since it was founded over 150 years ago, and it is girded for that fight from Maine to California and from the Lakes to the Gulf, where our great factories are producing more war goods than in peace times we ever imagined would be possible. We have assembled in this country and in the far reaches of the world the greatest Army, Navy and Air Corps that man has ever seen. (Applause). I am proud to be a part of this great struggle, and particularly proud that I am in the Signal Corps.

Today is an unusual occasion, in that it happens to be the 83rd anniversary of the appointment of the first Chief Signal Officer. The Signal Corps is distinctly American.

Other nations in history have had infantry, artillery, cavalry, or their counterpart through the years, but the Signal Corps was founded in America, the first organization of its kind. And furthermore, it has been clearly identified with all of the scientific and economic development of this great nation ever since its founding. From the little red and white flags as a method of communication, which we simulate and wear as our insignia, it has kept progress with electricity, telegraph, telephone, radio, and now that most remarkable of all, Radar. That is the invention, I might say in passing, which we do not talk about in detail but which is recorded as being largely responsible for winning the Battle of Britain, and the thing by means of which you read in the papers recently a Jap battleship eight mlies away, serving as a target, was hit with a direct hit in the blackness of night, surrounded by fog.

The Signal Corps is the communication system of the Army. It has been truly said that the Army would be at a standstill within an hour if the communications failed, and we have a very alert motto, quite significant, I think, "Get the Message Through."

Perhaps these remarks have sounded as though I have gone afield from the purpose for which we are gathered here. I believe not. I think we can draw a very pertinent affinity of purpose. For generations the world has looked upon the lawyer as the leader of thought in the community. People have gone to him for advice. They expect him to point out the way to sound government, constitutional rights, in a word, to direct the intelligent, forward-looking thought of the state and the nation. This is well borne out by the number of lawyers who have high public office, who fill our state legislatures and who are elected to the Congress of the United States. We are, in a very real sense, the communication system of the nation, pointing the way, particularly in desperate times, in a nation torn with war. It is our job to get the message through, the message that the democratic way of life, of government by the people, a free people, still enjoying freedom of speech and freedom of religious worship, that those God-given benefits may be preserved at all costs; that our constitutional form of government, a sound judiciary, a representative legislature and a responsible executive may live for the benefit of posterity in as true a sense as when these rights were first born in the Revolutionary War.

Mr. President, I am honored to be with you today and to ask for the many fine fellows, 78 of our members, who are in the service of our country. (Applause). We all wish for you sound judgment in your deliberations, that they may bring forth wise counsel to those of you who remain to perpetuate the ideals of this Association, because we must preserve the gains which we have made in the development of insurance law and legislation so that we may go forward again when peace has been restored to us.

Again, sir, I welcome you to Chicago and the great State of Illinois. (Applause).

PRESIDENT SMITH: Ladies and gentlemen, I am sure the address of welcome which Jack Niehaus has given us will be felt by each of us individually. As President, I am proud of Jack Niehaus and of the other members of this Association who have entered the armed forces, such a large number of them, when you consider the average age of the members of this Association, as well as the prominence that they have all attained, of course, that they have gone into the armed services in such large numbers, and Jack Niehaus is doing credit to this Association, to himself as a lawyer, to the State of Illinois, and I am delighted that he could be here and I thank you very much, Jack, for the fine address of welcome that you have given us.

Now, I chose as the one to respond to this address of welcome, one of the men that I regard as one of the grandest gentlemen that I have ever had any contacts with. As a young man, he was a successful lawyer. He became a successful politician and during his term in the high office of Governor of the State of Georgia, he displayed the greatest courage, I believe, that any chief executive of any state has had to display when, in the face of a howling mob, he refused to be allowed to be put to death a man who had been accused of a crime which this grand gentleman knew he was not guilty of, and he faced the multitude and he came through it all, after a period of stress and strain, and he is your friend and my friend and, to me, he embodies just what a gentleman should be..

You know, the story is told of Governor Slaton that when a young man, on one occasion he was on a wagon with one of his negro helpers going to deliver a product of his farm, and at that time they had toll gates in the State of Georgia and as you came to

these toll gates, you had to call out to the keeper of the gate what you had on your wagon or on your cart, pay the toll and be allowed to pass through.

It so happened there were several of these toll gates between Governor Slaton's farm and where he was going to deliver this product. He got to the first gate and the tollkeeper called out, "What have you got on that wagon, young fellow?"

He said, "A load of manure and a nigger."

He paid the toll and passed through. He got to the second gate. The tollkeeper called out, "Young fellow, what have you got on that wagon?"

He said, "A load of manure and a nigger."

He paid the toll and passed on. He came to the third gate and just as the tollkeeper called out at that gate, "Young fellow, what have you got on that wagon?" the nigger reached over and tapped this young man on the shoulder and said, "Boss, if you don't mind, I wish you would mention me first this time." (Laughter).

Now, he has always been glad to mention his friends, to stand for them, and I am sure we have no finer member of this organization than my good friend and your good friend and a man I admire very much, former Governor John M. Slaton of the great State of Georgia. (Applause).

GOVERNOR SLATON: Mr. President, Colonel Niehaus, members of the International Association of Insurance Counsel:

After the complimentary things that have been said, this occurs to me. There was a federal judge who heard a case at Asheville and the lawyer on the one side, who came from Atlanta, spoke so loudly that it hurt the tympanum of the ears of his opposing counsel and he appealed to the judge to please have this lawyer speak in a lower tone, but the judge said, "No, Asheville, North Carolina, is in Buncombe County." (Laughter).

While a tribute was being paid by Colonel Niehaus to the audience, the President of the American Bar Association, whom I always obey, said, "You must say something about Georgia," and this occurred to me.

A few years ago a distinguished clergyman from Georgia spoke to the Pilgrim Fathers in Boston, and he said that in Georgia, at old Midway Church, where all of the early trustees of Georgia were buried, there was a minister named Holmes. He was called from Midway Church to Boston and three months after he arrived in Boston, Oliver Wendell Holmes was born, all of which," the clergyman said, "showed that many noble things were conceived in the South for which New England claimed the credit."

Now, that is somewhat apropos here, because when I looked in the encyclopaedia, I found that Illinois was really established by Southern people. I said that to a distinguished gentleman from Chicago and he said he recognized it; that he was descended from them. In fact, as you know, the whole country has contributed to Illinois and the whole country is proud of it.

There is no place where our organization can meet with greater fitness than in Chicago, in the State of Illinois. Both have always been hospitable to energy, enterprise and independence. Illinois the Prairie State, whose granaries have fed the world. A few years ago I visited the great Spitfield Market, in London, and saw hanging in the enormous storehouse untold quantities of meat, and thinking it came from the hills of Scotland and the pastures of England, I was told two-thirds of it came from Chicago.

Here we recognize the Capitol of the West, reclaimed from hostile savages, and now the reservoir of resources to feed and bless mankind.

I need not mention its great mineral wealth, its farms with unmeasured expanse of grain, its noble institutions of learning, its charitable organizations to take care of the afflicted, its commercial enterprises from which spreads intercourse with distant States. All these are too well known to require attention.

But the wealth of this City and State consists in the qualities of the men who made them and the great West. From it came Lincoln, whom the great Georgia orator Henry Grady declared in his Boston speech to be the typical American citizen.

Modestly born, needing no aid of wealth or powerful family connection, nor high social position, he illustrated the qualities of the true American, and the possibilities of those who are worthy of American principles and traditions.

It is the suggestion of his life, and of the achievements of those like him which I think make us welcome in this State and City.

Our forbears did not come to this country in search of physical security, except such as they might achieve. They came in expectation of insecurity. They left homes protected by policemen, where their sleep was not disturbed by murderous savages, nor

where they were exposed to the rigors of bitter winter, nor the menace of hunger. They came for that freedom in which alone man can accomplish the noblest and the best.

They accepted the creed:

"Cast the bantling on the rock;
Suckle him with the she wolf's teat.
Quartered with the hawk and fox,
Power and speed his hands and feet."

These Pioneers, of the type which made the West, asked no aid and sought the achievements open to noble struggle and industry and self-reliance. They went to Church with their Bible in one hand and their rifle in the other, and disregarding the worn out creeds of Europe, they made the richest, strongest, the happiest Nation on earth.

Colonel Niehaus, who welcomes us wears the uniform of those whose flag today is the hope of the world, and the only bulwark against the greed, ruthlessness and barbarism of the enemies of civilization.

We are Insurance Counsel, and who are our clients? We are welcome because of those whom we represent, and the work in which we are engaged.

There are nearly one hundred million policy holders in the United States. Contracts by these insurance companies protect against death, old age, unemployment, against the financial uncertainty of life. The husband loses his life or is struck by accident, and the widow is not left unprovided for nor his children hungry. Disease attacks the wage earner, and his providence relieves him from the suffering of want.

The factory is burned and the insurance safeguards speedily restore its impaired machinery and demolished walls. In my section the house servant carries his policy, with weekly payments, to provide a decent funeral, and the habit is more educational in character than the book learning of colleges. I need not recite the whole category of human afflictions for which a solace is provided.

Reserves are carried, and wise business management has been so general that scarcely the failure of an insurance company has been recorded. There is no danger that in some depression a possible attempt may be made that the beneficiary shall yield that for which many a sacrifice has been suffered. There is no control by politicians, who employ alluring speeches or demagogic attacks, on the stern business rules that security demands for the payment of the insurance obligations.

And besides the blessings of safeguards against human ills, the insurance business makes a noble citizenry. A danger of public charity is that it destroys the morale of the recipient. It lessens his independence and self-reliance. It destroys his spirit of sacrifice. He gives nothing of himself for it.

The father who gives of his daily wage to provide for his family learns the lesson of sacrifice and of foresight, and knows that he is giving himself for those he loves. And they know how many a pleasure he has surrendered for their happiness, and the family, the basis of all civilization, is strengthened.

Suggestions are made that the Government invade this field of private enterprise that has been so successful, and so rich in its fruitage. It is sought to take care of the child from the cradle to the grave, and when this is done what shall become of the spirit that made Illinois and the Nation?

The socialistic Church in Jerusalem was the only one that failed. Europe, with all such weakening influences is practically in slavery, and is calling for us to save it. Shall we sacrifice a faith which made us strong and it weak?

In this home of the Pioneer ought we not to feel welcome in preserving and continuing the work he so courageously began. Ought we not to resist the softening and enfeebling influence of movements, under the alluring name of Social Security, that promise to take care of the citizen like a helpless infant. He sacrifices his liberty as he becomes the recipient of charity, and Liberty with all its drawbacks is everywhere more attractive for a noble soul than a good social order without it.

Protect the insurance companies in their noble and successful work from the desecrating hands of impractical, and often designing politicians, and

"The moons may wax and wane and day by day the toilsome march be resumed, but like the heroic Pioneers, you shall at last reach the Pacific from whose ports rich galleys sail for the treasures of the Orient."

"Shall I tell you the key figure in life? That dauntless noble figure is the Pioneer. His one glory is that he found the way, and his reward is the only one of him who measures aright the meaning of life.

" 'The paths to the house I seek to make,
But leave to those to come the house itself'."

PRESIDENT SMITH: Governor Slaton, you have nobly and grandly responded to the welcome given us by Jack Niehaus.

ADDRESS OF PRESIDENT SMITH

Now, ladies and gentlemen, the By-Laws of this Association require that the President make an address. Well, now, that isn't the first by-law that has been violated and that is going to be violated in this two-year period that I have served as President. Of course, I didn't run for the second term; I didn't have to do that. We just arranged it so I held over without the trouble and necessity and bother of having to be voted on the second term. But I can at least assure you of this, that I am no candidate for a third term. (Laughter).

Now, ladies and gentlemen, rather than make an address, I wish to report to you on a few of the high lights of this Association.

As all of you know, we have been accustoned to meet at that very glorious spot, the Greenbrier at White Sulphur. When I was elected President of this organization, it was my hope that we could again meet there in 1942, because it seemed that all the members enjoyed that place above all places that we had met theretofore. Circumstances forced upon us the necessity of canceling the last year's convention. You can readily understand why I could not announce in my memorandum to the membership just why we couldn't meet there. We not only had the transportation difficulties which were mentioned and which were mentioned publicly, but, as you found out, shortly after the date on which we were to have had our convention, the hotel was taken over by the government, and so I had this information to some extent ahead of time and I saw it was quite impossible to have our convention at that time and, after consultation with the members of the Executive Committee, we called off that meeting. I am sure we did the right thing under the circumstances and I am sure that those of us—and that means all of us who have any spirit or feeling of patriotism—felt that under the circumstances that was the thing for us to do.

That necessitated my holding over for two years. During these two years, I may say to you gentlemen that I have never dealt with any Executive Committee or any other group of men that has cooperated in a finer way with me than have the members of the Executive Committee of this Association, and, in fact, I don't believe that I have had a single member of this Association that I have called upon to do any kind of a task but that they have responded cheerfully, promptly and efficiently, and I wish to thank each of you who for two years have helped me to carry the burden of keeping this organization together and furthering its objectives, for what you have done.

We have kept the Journal on a high plane, under the leadership and editorship of George Yancey, who has always been untiring in his efforts for the Association.

We had the first Mid-Winter meeting of the Executive Committee, as has been the custom, at the most convenient spot that could be found, according to history and tradition, Miami Beach, and we met there and had at least three days of quite hard work and, on the side, of course, there were a few of those who were a little late sometimes getting in in the morning, but generally we worked pretty well all during the day.

I think if there is any one thing that contributed to this Association, other than the fine objectives, it has been the fact that we have not tried to punish the members with a large number of speeches at any one long sitting, and so I have endeavored in arranging the program for this meeting to follow that course, to the end that you might not only appreciate the speeches you heard but you might enjoy the friends of yours who are here and also the conviviality that naturally flows from a gathering of this kind, particularly that which will arise from some of you not having had a chance to meet with some of your friends from different parts of the country for two years.

I am not going to tell you anything about the work of the Journal because you read that. I do wish to say that I have been struck with the fact that a great many lawyers in different parts of the country have told me, men who have never been to a convention, that they read very promptly every word of the Journal because they have found it to be a publication really worth while in the insurance field.

Of course, at the Mid-Winter meeting in Miami just mentioned, we arranged for the convention at White Suphur and we thought we were going to have a spendid program, which came to naught by reason of the national situation.

Then, in 1943, in Mid-Winter, in January of this year, we had the meeting of the Executive Committee. Prior to that, during the meeting of the House of Delegates and also during the meeting of the American Bar Association in Detroit, we had had impromptu meetings of those members of the Association who happened to be in attendance.

At Detroit, some of us felt that maybe we had made a mistake in not holding the Convention last year; that maybe we should have held it in connection with the American Bar meeting, because there were so many members of our group present, but, after all, there was not a representative group and probably we did the wisest thing in not trying to have a meeting on such short notice at any place where we could not be sure of hotel accommodations, because none of us like to go away from home and be uncomfortable.

After I was elected President, I met with the Secretary and the Past President in the City of New York for the purpose of appointing committees, and we had some difficulty in making those appointments. Some of you may have been left off of committees you would like to have been on. It is quite difficult, gentlemen, out of an organization of this sort, to place the right man in the right spot, and while I knew most of you, I d'd not know all of you, and every once in a while, Oscar Brown and Dick Montgomery, who met with me, would suggest the name of some man who had been active in this Association and would say, "Why, he ought to be on such and such a committee." A few times, they struck men I didn't know, because while I knew most of you, there were some very worth while men who had not been very regular attendants at the convention and I did not know them, and after I had disclaimed acquaintanceship with a number of these men, Oscar Brown said to me, "How is it you don't know this man and how is it you don't know that man?" He said, "I don't understand how you ever got elected President of this Association without knowing any more people than you know."

Well, I told him, of course, that I thought that was easy; that for two years Mrs. Smith had been Chairman of the Ladies' Entertainment Committee and I had a few influential friends who probably knew how to practice a little politics, and that seemed to satisfy Oscar.

But, anyhow, I wish to thank each one of you for what you have done as Committee members and for the work of the committees, because most of them have functioned quite well. Then, I have had a good many volunteers from among the membership, suggesting one thing and another that could be done for the furtherance of the objectives of this Association, and those men have performed very nobly for our group.

After the Mid-Winter meeting here in Chicago, at which this convention was arranged, the New York members of the Association said they would like to have a meeting there in connection with the New York State Bar meeting, and I went, at their invitation, to attend that meeting, and, my friends, it was quite inspiring, indeed, on short notice, to have almost 100 people meet us at a mid-day luncheon in the Biltmore Hotel on a Saturday during the convention of the New York State Bar, and it made us all feel good to see so many of our friends. People came from the states around there and we had quite a fine meeting, most of which was social, as you could well imagine, but it did indicate the interest of the members of this Association in what we are doing. And I might also say at the Mid-Winter meeting of the Executive Committee we sent notices to the residents who belong to our Association who live in the abjoining states to Illinois and when we had our dinner on Saturday night here in this hotel, we had 115 people sit down to that dinner, including members from every state adjoining Illinois and even some farther away.

I mention these things to let you know that in spite of the fact that two years have passed during which a great many things have transpired that affect all of us, the hearts of the members of this Association are in this Association second to no association I know of, and I appreciate having been elected to this Association. I appreciate it second only to that of my own State Association, which, of course, I must put first, and the honor they gave me in electing me President, but I know of no group of men that works finer with the President, or a finer group than the men making up this Association, wherever you meet. While you heard Governor Slaton's response to the address of welcome, he will also give you a welcome if you come to Atlanta. I had occasion to be down there about three months ago and Governor Slaton found that Mrs. Smith and I were going to be there. I arrived in the morning to see Judge Powell, attempted to attend to some business and finally threw up

my hands, because it was announced when I got to Judge Powell's office, "Why," he said, "Jack Slaton and Mrs. Slaton have a luncheon arranged for you and Mrs. Smith at Capital City Club at 12:30 and at 3 o'clock we are going somewhere, and at 5:00 we are going out to the Driving Club and tonight at dinner . . ." and finally I said, "Well, say, I am going to have to spend a good while in Georgia to take advantage of all your opportunities."

And so I think that wherever you go, you will find members of this Association, you will find as hearty a welcome as you will find in any organization.

Now, we discussed at one time having regional meetings similar to the New York meeting, upon a little more formal scale. That was contemplated and one was tentatively arranged to be held either in Atlanta or Charlotte, N. C. My friend, John Johnston, of Greenville, South Carolina, did a great deal of work, but after considering the matter carefully and after circularizing all the members in three or four states, we decided it would be quite impossible, on account of lack of transportation facilities and hotel accommodations, to hold those regional meetings.

Now, of course, I know that my friends on the American Bar Board will probably think that was an idea I stole from some of the ideas of the American Bar Board, and right here let me say that when the American Bar Board, of which I have been a member for two years, was contemplating their summer meeting, I looked over the group sitting around the table and, to my very great satisfaction, I saw that every member of the American Bar Board who was eligible for membership in this Association save two were members of this Association, and I thought that that was a grand thing, that members of this Association were doing so much work for the American Bar Association in its efforts to promote the administration of justice and to carry forward the objectives of that Association. And then those two men who were eligible but who were not members, I very promptly arranged to get their applications and they are now members of this Association and I shall present them later on. So that at the present time, everybody on the American Bar Board who is eligible by reason of representation of insurance companies is a member of this Association, and I suspect that if I can see some of my friends here among the insurance companies, maybe I can arrange for the cooperation of the President of the American Bar and two or three others.

Now, they agreed to meet with us jointly and I think it is a very happy occasion that the Board of the American Bar did agree to meet with us at this time, so we have been here for three days. They have concluded their work but most of them are staying over to participate in our activities. So, feeling that the present President of the American Bar Association had probably done more real hard work than any Association President that we have ever had, that he had worked untiringly, that he had practically done nothing else except work for the American Bar Association, that he is interested in the careers of lawyers and in what they can accomplish for themselves and their clients and also their country, it seemed to me most fitting that I should invite to address you this morning, the President of that Association; and so at some sacrifice, but with considerable apparent pleasure, George Maurice Morris, President of the American Bar Association, agreed to remain in Chicago today and to address us this morning, and so I now present to you my friend, the friend of most of you, the friend of all of you when you know him, a fine, upstanding lawyer who has given of his time unstintingly for many years to the work of the American Bar Association and who is interested in lawyers of all classes and creeds and of every type—George Maurice Morris of Washington, D. C., President of the American Bar Association." (Applause as all stand).

(The address of Mr. Morris will be found on page 30).

PRESIDENT SMITH: Ladies and gentlemen, I appreciate very much my friend George Morris staying here in Chicago today, after having been here for three days, to deliver to us this inspiring address, because I am sure that we, as lawyers, are concerned not only with the practice of insurance and the defense of our clients, but we are all, to a far greater extent, interested in our duty as citizens and as lawyers to our citizens interested in their nation.

Now, as an interlude to the program for a few moments, I wish to recognize those members of the Board of Governors who are present with us today, and I am going to start first with a friend of mine who is a law partner of a former Vice President of this Association. We all remember with great

pleasure our contacts with Tom Rawle of Philadelphia. We had with us yesterday as my guest the nominee for the next Presidency of the American Bar Association and if he behaves as I think he will for the next sixty days, I do not believe he will have any opposition. I wish to present to you at this time, my friend, Mr. Joseph W. Henderson of Philadelphia, the next President of the American Bar Association. Joe, will you come up and say a word? (Applause).

MR. HENDERSON: Mr. President, distinguished guests, ladies and gentlemen and fellow members of the Insurance Counsel Association:

I am not here as your guest; I am here by right. (Laughter). Gentlemen, I can best set forth to you what I am going to say by a very short story of a relative of mine. This gentleman was a general in the Pennsylvania National Guard. He was very much interested in American citizenship and things of that nature, so he was called in one of the public schools in Philadelphia to deliver an address and he came to that greatest of all audiences, youth, and he came to these youngsters and he said, "Boys and girls, what do you want me to talk about?" And they very politely turned and said, "About two minutes."

Mr. President, this is a great privilege for me. I belong to this Association and have for quite a few years but this is the first time that I have been able to attend its convention, and I am particularly happy to attend it under your great leadership, my dear friend.

I have heard about this Association every year. This partner of mine would come back from your meetings and tell me of all that he had learned in connection with insurance companies and the practice of insurance law, and particiularly as well concerning the social side of your meetings.

You have a great Association. I am very happy to be a member of it. I shall try to mend my ways in the future. It has been my loss, not yours, and I hope to attend these meetings from now on. I furthermore feel that this Association does have a great future, if I am correct. My very great friend and our distinguished leader of the American Bar, Mr. George Morris, has talked about that fine print on the back of a policy. I think we who are on the firing line regularly in connection with insurance companies, trial lawyers, trying matters for those companies—and I am speaking primarily in that connection—I think that this Association's future depends somewhat upon that.

It is best typified by the story of Will Rogers. When someone came to Will and Will had just taken out a policy and he said, "Will, are you insured?" he said, "I have just read the policy and I don't know."

I think our future is assured. Thank you, Mr. President. (Applause).

PRESIDENT SMITH: Well, of course, there is no doubt but that Joe Henderson was technically a member of the Association because his name was on the roster and he was paying his dues, but I invited him here as my guest upon this occasion. However, I am glad he took issue with me on that, because I shall now notify the hotel management not to put his bill on my bill, as I had contemplated. (Laughter).

I wish to recognize next a lovable old friend of ours who prepared the By-Laws of this Association, and I guess they are all right, because they have been working quite successfully and, so far as I know, they have accomplished the design that he intended, my friend Harry Knight, Secretary of the American Bar Association. (Applause).

And then in the back of the hall I see my friend, John Howe Voorhees, Treasurer of the American Bar Association, that I would like to ask to stand. (Applause).

Now, I don't want to miss some of my colleagues on that Board. There are several other members of the Board who are members of this Association.

I wish now to present two men in the order of seniority. One is my good friend who has done a tremendous amount of work for the American Bar Association, who is a man devoting his time to the fight that the American Bar Association made with respect to the Supreme Court, a man whom every man who has ever come in contact with respects for his ability, his integrity, his fairness and also his ability to say just what he thinks about anything, our new member, Mr. Sylvester Smith, former President of the New Jersey State Bar Association, member of the Board of Governors of the American Bar Association, Chairman of the Budget Committee and my good friend. Sylvester. (Applause). I might say Sylvester is also general solicitor of the Prudential Life Insurance Company and probably a good many of you know him through that connection.

I next wish to present my young friend who is just becoming a member of this As-

sociation and this is probably the first official notice that he finally got by the Board last night, my friend Joe Stecher, Assistant Secretary of the American Bar, of Toledo, Ohio. (Applause).

Harry, do you see any other members of the Board here? If you do, we would like you to call them out.

MR. KNIGHT: I think not.

PRESIDENT SMITH: I believe that is all of those who are present at the moment. Probably some of them are in the Yacht Club. And, by the way, you know what the Yacht Club is and where to find it, I am sure, without any instructions from the President.

We have had to make a little change in the program. On the program for this morning was the address listed, the address of Mr. Guy Crump, Chairman of the House of Delegates of the American Bar Association. That is a somewhat new departure from the type of addresses that we have had at Insurance Counsel Association meetings but it is one, I think, that is a good new departure. However, by reason of the press of duties for the last two or three days on the American Bar Board, Guy is not ready to speak until tomorrow morning, and so I have transposed Frank Marryott's speech from tomorrow until this morning and Mr. Crump will speak tomorrow morning. I now present to you one of our Vice Presidents, an ardent member of this Association, Frank Marryott of Boston. (Applause).

(The address of Mr. Marryott will be found on page 33).

PRESIDENT SMITH: Ladies and gentlemen, I am sure all of us appreciate the painstaking care that Frank Marryott has put into the production of his paper, and that, of course, along with others delivered at this Convention, will be published in the Journal. I wish to thank you, Frank, for your splendid paper this morning.

Now, for some announcements. I want now to hear from Pat Carey, Chairman of the Entertainment Committee, who has some announcements to make. Pat, will you please come forward?

MR. CAREY: Mr. President and gentlemen:

The problem of entertainment at this convention seemed rather simple for the reason that we have so many facilities here at the hotel. I think it was very fortunate, when we had to move from White Sulphur, where we had so many things to entertain us, that we could find a place like this, where, in the absence of golf and other facilities, we still can find so many other things available here for the membership.

At this time I have also been asked by the President to introduce Mrs. Shackleford, the Chairman of the Ladies' Entertainment Committee, who will make a few announcements here regarding the ladies' entertainment. Mrs. Shackleford of Tampa, Fla. (Applause).

MRS. SHACKLEFORD: Ladies and gentlemen:

The ladies' entertainment has been curtailed a little bit, along with pleasure driving and the consumption of stimulants, notably caffeine, but we are going to have a bridge party and we do want all the ladies to come. I have not told the men before about that, but they are invited too. Mrs. Milo Crawford of Detroit is the Chairman of the Bridge Committee. That will be tomorrow afternoon at 2:30 in the West Lounge.

MR. CAREY: This evening, of course, at the hour of 6:15, there will be the social hour, really the President's Reception. That will be in the West Lounge and all of you, of course, are invited to attend. Our President has certainly served us well during this two-year term that has been wished on him and I think we all should do him high honor in this, his reception and social hour, and so I hope you will all arrange to be there and I believe that you will be properly taken care of.

We had a committee that was known as the Trap Shooting Committee but, of course, when guns went to war, we were unable to provide the guns and the space wasn't quite available here for that endeavor and we thought we might change one letter in the name of the Committee and make it the Crap Shooting Committee and let it go at that, but the Chairman of that Committee, Dave McAlister, is an ingenious chap and he has now switched it over into a Photogenic Committee or something of that kind, I guess you would call it. At least, he has arranged to display in the corridor just outside of this room, a number of photographs of the members of this Association taken on previous occasions. He is offering some prizes for the best names selected for those pictures. The pictures will be numbered and you can figure out a name for the picture and deposit your vote at the registration desk or

give it to Mr. McAlister, or we may provide a place beside the picture. But this should be done, because in the competition there may arise some very humorous names that can be assigned to these pictures and we hope that maybe in the future it will encourage the taking of pictures by other members and eventually we will have quite a collection of photographs of various members of this group. So if you want to win a nice prize and do it easily, just select a fancy name for some of the pictures on the bulletin board.

The banquet, of course, according to your program, is scheduled for tomorrow night at 7:30.

I think that about completes the announcements so far as I know, of the Entertainment Committee, and I hope you all have a fine time. (Applause).

I regret that I forgot to announce the Tennis Committee, under Mr. Price Topping. I believe he is in the room. What arrangements have you made, Price?

MR. TOPPING: There are some very nice courts here. We have been unable to make any definite plans yet but if anybody is interested, I would suggest he get in touch with Mr. Campbell.

MR. CAREY: Any of you that may want to play tennis, see Mr. Price Topping and the members of his Committee in this room after this meeting is dispersed, and they can arrange for racquets in case you haven't brought yours.

I might also say the Chess Committee Chairman, Mr. Steve Mason of Detroit, wired me he couldn't be here because of an injury to his leg. Are there any other members of that committee present? I think that game could very well be played in the Sheridan Room. I think we could all join in.

PRESIDENT SMITH: Thank you, Mr. Carey. I don't quite understand how Steve Mason hurt his leg playing chess. It sounds like he was on some other mission.

The local committee on entertainment arrangements that has been assisting Pat Carey has been Royce Rowe and four other gentlemen. Royce, have you any announcements for your Committee?

MR. ROWE: No, I haven't anything to say beyond what Pat has had to say, except that we do have a young lady out here at the desk from the Chicago Association of Commerce who will answer any questions members may have about places to go or things to see and how to get there. That is what she is out there for.

QUESTION: Will she go with you? (Laughter).

PRESIDENT SMITH: Well, I am sure Royce will endeavor to do his part towards making any arrangements he can.

I wish now to call your attention to the By-Laws, which prescribe the appointment of a Nominating Committee. This Association has been quite successful and probably one of the reasons has been because we have not year after year continued in office the same men but rather have looked through the membership and have picked out men who have done work but who haven't previously been officially recognized as officers.

The function of the Nominating Committee is to canvass the list of members of the Association, paying, of course, particular attention to those who have attended the conventions, in order to pick out those for officers who are able to work, who are willing to work and whom everyone knows can be counted upon to do their part.

It is now my duty to announce the appointment of the Nominating Committee. The custom has been, as I understand it, to place on this Committee two former Presidents of the Association, in order that the other members of the Committee may know who not to put on because of prior service, and in order also to know who are the men in the Association—and that includes most of them —who have not held an official position and yet who are willing and anxious to work for the Association. I am announcing that Committee at the present time:

Milo Crawford, Detroit, Chairman,
John Barton, Nebraska,
Gerry Hayes, Milwaukee,
Tom Bartlett, Baltimore,
Wilson Jainsen, Hartford.

That Committee will want to hear from every single member present as to your suggestions for members of the Executive Committee and for officers, and I wish at this time to call your attention to the predicament that we are in, or the situation, rather, with respect to members of the Executive Committee.

Last year, three of those members would ordinarily have had their terms expire. This year, three men would have had their terms expire, and next year, three men have their terms expire. Last night at the Executive Committee meeting, the problem was dis-

cussed as to how to handle that, having in mind that we didn't wish to have a completely new Executive Committee, or a preponderance of new men on the Committee, because of the continuity of work that must be known and understood in order for it to be carried on, and I am now going to call on Pat Eager to make a statement for the Executive Committee. Pat, will you come up here? This is Pat Eager of Jackson, Miss'ssippi, a member of the Executive Committee.

MR. EAGER: Mr. President, ladies and gentlemen:

I was requested by the Executive Committee last evening to make this report to you this morning. Normally, we would have six vacancies on the Executive Committee by reason of the fact that three terms expired last summer and we had no annual convention. Those three are Tom Bartlett, Joe Sweet and myself; and there would be three additional members whose terms would expire at this meeting.

The Committee recommends to you that it would be unwise to elect such a large proportion of new membership. You would therefore have six new members of the Executive Committee out of nine. You elect three new Vice Presidents, you elect a new President, and probably some other officers, so you can see that you would probably have too large a majority of your Board composed of new and inexperienced material. I mean by that, not having served on the Board and not being as well acquainted with the activities of the Committee. So the Executive Committee has unanimously recommended to you for your consideration and, if you think well of it, for your adoption, that we proceed just as though that hiatus did not exist by virtue of no meeting last year and we elect three new men. The three older men on the Committee will retire and we will go on just as we have in the past, elect three new men this year and so on in the future. That is the recommendation of the Committee and I move the adoption of that, in order to bring it before the house, Mr. President.

MR. WEICHELT: I second the motion.

PRESIDENT SMITH: You have heard the motion and the second. Is there any discussion? If not, those in favor of the motion will say "Aye." Opposed, "No." The "Ayes" have it and it is so ordered.

Then, gentlemen, the Nominating Committee will have to nominate three members of the Executive Committee, a Secretary, a Treasurer and a President and three Vice Presidents, and I say again, gentlemen, please do not feel, any one of you, the slightest hesitancy about going to the members of this Committee and saying who you think ought to be holding these offices, because this committee is a committee that pretty well knows the membership but at the same time they wish the advice of you men, and the only way they can be certain of that is to have you tell them.

I would like to have Milo Crawford tell you where the Committee will meet and accept nominations.

MR. CRAWFORD: This has come to me in a really typical Willis Smith fashion. He never even talked to me about this. However, we will meet tonight at 10:30.

PRESIDENT SMITH: Wilbur Benoy wished me to announce that the Committee on Practice and Procedure will hold a meeting tomorrow, Tuesday, morning at 8:30 at breakfast, and, as you know, there is on the program for tomorrow afternoon a round table discussion which is headed by him and also on Practice and Procedure; and then we have a new type of insurance coverage to be discussed this time that I don't believe we have had very much of anything said about before, and that is Air Transport Insurance, and we were very happy and fortunate in getting Smythe Gambrell, who is an insurance lawyer and also general counsel of Eastern Airlines, to head up that open forum discussion, and if you will look at the program, you will see that he has some very distinguished lawyers on the program for this round table discussion tomorrow.

I don't believe it has been the custom in the past to have a Committee on Memorials. It occurred to me this year, when two of our distinguished members passed on, as well as several others who have not been quite as active in the Association, that at every convention we ought at least to have some short notice, some passing notice, of the departure of these friends of ours. And so, unless there is some objection, I am going to appoint a Committee on Memorials, to report on Wednesday morning. And I don't mean by that, long papers on these men, because we know them and loved them and we don't want to take the time to do that, because their memory to us is so much that we need not do that, but we do wish to take some official notice of their passing, and I appoint on that

Committee, Walter Mayne of St. Louis, Mr. Field of Boston and Mr. Roberts of Cleveland, and Mr. Mayne will please call that Committee together.

Now, in the meantime, I wish any of you who know of any member of the Association who has died in the last two years would please report to this Committee. But be very careful; don't get somebody's name in there who hasn't passed on because, like Mark Twain, they might think that that report was very much exaggerated.

I now wish to present, just to stand and take a bow, a genteman who is distinguished in his work in America and who is going to be our guest speaker at the banquet tomorrow night, Mayor Stewart of Cincinnati. Will you rise, Mayor Stewart? (Applause).

TUESDAY MORNING SESSION

The Tuesday morning general session was called to order at 10:25 o'clock, Vice President Allan Brosmith presiding.

CHAIRMAN BROSMITH: Will the meeting please come to order. Gentlemen, our President was called to the telephone recently and in his absence, I am going to attempt to take his place.

The first thing on our program this morning is the report of the Executive Committee. Mr. Oscar Brown, will you make the report?

MR. BROWN: Mr. Brosmith and gentlemen:

Before I make the report of the Executive Committee. This ought to be a rather historic report, because this Executive Committee, as you know, has had the longest continuous service of any Executive Committee of the Association, due to the fact that we had no annual meeting last year.

There have been four regular meetings of the Committee, the first held on the 5th of September, 1941, at White Sulphur Springs. All of the members of the Committee were in attendance at the convention but two had to leave before the meeting was organized. At that meeting, they did the regular chores that had to be done in running this Association and I think the most important thing they did was to reappoint George Yancey Editor of the Journal, and he has continued to serve, with the results that you know.

On February 2, 3 and 4 of 1942, the Committee met at Miami Beach, with every Committee member in attendance.

We have had working during all of this time a very efficient Budget or Finance Committee in connection with the Committee's efforts and they perfected their work at that meeting. I am not going into detail about the things that were done because the results have all been published in the Journal. We at that meeting considered an amendment to the By-Laws that will come before you for action before this convention adjourns, and also at that meeting arranged for the remission of dues of all our members in the Service, now totaling over 70.

We had a meeting in the Edgewater Beach Hotel in the winter of this year and at that meeting we had a 100 per cent attendance. That is, we have had no meeting at which there were any absentees except the meeting immediately after the convention at White Sulphur, where two had to leave early. Also, at that time there were some 30 members of the Association in the hotel who met with the Committee.

At that meeting, unfortunately, we were confronted by the recent death of one of our members, the lovable Bill Reeder, and Kenneth Cope of Ohio was appointed to fill the vacancy which occurred through Mr. Reeder's death.

The Committee also met in this hotel on Sunday night last and continued in session until sometime after midnight, bringing up to date the detailed work which has to do with the running of this Association.

I think the situation which we found ourselves in through the inability to hold our last annual convention shows the wisdom of an organization of an Executive Committee such as we have. We hope that they do not again have to carry the burden without the advice and instruction that they get from the membership for as long a time as they did, but if they do, I think the organization itself is in splendid shape to carry that burden. (Applause).

CHAIRMAN BROSMITH: Gentlemen, you have heard the report of the Executive Committee. What is your pleasure?

MR. MAYNE: I move it be approved.

MR. ROWE: I second the motion.

CHAIRMAN BROSMITH: It has been moved and seconded that the report be approved. Those in favor, please say "Aye." Opposed. The motion is carried.

We will now hear the report of our Secretary.

(Secretary Montgomery read his report).

Gentlemen, you have heard that report. What is your pleasure regarding it?

MR. POWELL: I move its adoption.

MR. DRAKE: I second the motion.

CHAIRMAN BROSMITH: It has been moved and seconded that the report be adopted. Those in favor, please say "Aye." Opposed, "No." It is carried.

The next is the report of our honorable Treasurer.

TREASURER NOLL: Mr. Chairman and members of the Association:

On account of not having had a meeting in the summer of 1942, there was no report for 1942, the year ending July 31, 1942, made to the convention. There was, however, a report made to the Finance Committee and approved by them and the accounts at that time were audited. I think I might give you a summary of the report made as of July 31, 1942. On July 31, 1941—that was the year we agreed we would start August 1, 1941—on July 31, 1941, we had cash on hand of $22,775.52, and our receipts from dues made the total at the beginning of the accounting, $35,016.09. Our expenditures were $12,-552.50, leaving a balance as of July 31, 1942, of $22,463.59. Beginning with that balance, I have made an accounting to June 15 of this year; with a balance of the $22,463.59, with our dues collected, we had a total of $28,-749.92, plus the account in the Whitney Bank, or a total of $33,956.53. Our expenditures this year were: Secretary, $631.35; Assistant to Secretary, $1,589.70; Treasurer, $85.31; Journal, $3,315.54; Legislative Committee, $19.87; Summer Convention, $45.91—that is the one we didn't hold but in connection with the one we hoped to hold; midwinter meeting, $2,392.98, which was the meeting held in this hotel in January; a refund to members of $24.00, or total expenditures of $8,104.86, and we had on hand on June 15th, 1943, $25,851.67. Fifteen thousand dollars of that money is invested in War Savings Bonds of the "G" series. You are all familiar with the "G." They pay 2½ per cent interest semi-annually. The remainder of the money is on deposit in the Peoples Bank and Trust Company, Marietta, Ohio, $3,568.78; Citizens Bank, Beverly, Ohio, $75.28; Bartlett Farmers Bank, $2,000 and the Whitney National Bank, New Orleans, La., $5,207.61.

Our Secretary collects the dues and deposits them in the Whitney Bank at New Orleans and I check on that and transfer the funds to my checking account at the Peoples Bank in Marietta.

The report has been audited by Cecil Dye, not a certified public accountant—we don't have one in Marietta, but a good auditor, and his certificate is attached. It has also been examined by the Finance Committee and the three members have signed. (Applause).

CHAIRMAN BROSMITH: Gentlemen, you have heard your Treasurer's report. Does anyone wish to discuss it?

MR. POWELL: I move it be adopted.

MR. HEMRY: I second the motion.

CHAIRMAN BROSMITH: Those in favor of the motion, please say "Aye." Opposed. It is carried.

MR. CRAWFORD: The Nominating Committee will meet again at 4:30 in the Berwyn Room, which is just at the end of this corridor. We would appreciate having any member of this Association come in and give us their ideas and views in regard to the nominations which we must make and place before you tomorrow morning.

PRESIDENT SMITH: I would like to have the Secretary make one or two announcements at this time.

Secretary Montgomery announced Mr. Royce Rowe had left passes for the races.

Of course, I wish to warn you that these tickets which Royce has provided for us for the races do not carry with them any guarantee. In fact, I don't believe he has furnished dope sheets. If we go out to see these races, I am assuming, of course, that his company underwrites no losses.

We have this morning to speak to us, Mr. James S. Kemper, former President of the United States Chamber of Commerce. He was one of the original directors of that organization, elected in 1920. He started out in his career in that organization first as Chairman of the Insurance Department Committee. Like some of our friends, including your President, he declined to run for either a second or a third term. He was elected President and then, according to custom, he was re-elected, and finally, in 1940, he was elected President of the Chamber of Commerce of the United States.

So it seemed to me when we have in our type of business a distinguished American, a man who had made his mark, a man who had achieved fame in America, a man whom I am told is not only an excellent speaker

but a genial gentleman, that we should have him address us here in the City of Chicago, and it is with the greatest pleasure and, in fact, with very great pride that I present to you at this time Mr. James S. Kemper. (Applause).

(The address of Mr. Kemper will be found on page 39).

PRESIDENT SMITH: I agree with Mr. Kemper and I know that each of you agree with him. We wish to have a road to peace, and to just as long a period of peace as we can possibly have, but we can't have it by any talk that we can keep forever want from the doors of some of our human element. We tried that, as my good friends from Georgia know. That was tried in the South after the War Between the States, when every negro was promised 40 acres and a mule. Did that raise to the level of this organization the negroes who were given a start with 40 acres and a mule? No. indeed, because human nature and the realistic conditions that they faced absolutely prevented the realization of any such dream as those well meaning persons had, and it seems to me that Mr. Kemper has done us and the people who read his speech a distinct favor in pointing out just what he has this morning and I thank you again, Mr. Kemper, for your appearance here and I am sure you realize by the applause that you received that what you have said has struck a responsive chord in the minds and the hearts of the men who have heard you. Of course, I noticed that, like Royce Rowe, you like your ice water in the morning.

We have with us this morning, Mr. Guy Crump, of Los Angeles, Calif., Chairman of the House of Delegates of the American Bar Association, who is going to speak to us on the Plaintiff's Lawyer's View of Insurance Companies and their Counsel, and while he speaks, I am going to yield the gavel to my friend, the Vice President, Allan Brosmith, in order that I may take a seat down there, lest if I was behind him he might say something that he wouldn't say if I was in front. Mr. Crump. (Applause).

MR. CRUMP: Mr. President and gentlemen of the Association:

You will have to pardon me if I hesitate a moment before I begin with my paper. I have been deeply moved by the introduction. In fact, there was a note in the remarks of my good friend, Mr. Smith, and a deep undertone which led me to picture myself, not standing here before you but lying here in about a 5 foot 6 inches or 6 feet receptacle, with flowers banked around me. I appreciate the funerel introduction, Mr. Smith, and it was entirely appropriate, because I find it necessary to inject a serious note into your proceedings for a few moments and I trust you will pardon me for doing so.

Is there anybody who can't hear me? If so, you are fortunate.

(The address of Mr. Crump will be found on page 43).

CHAIRMAN BROSMITH: Mr. Crump, the reception that your address received speaks far more eloquently than any words of mine of the happiness we all enjoyed in listening to you. We are very grateful to you, sir, for coming to us.

MR. CRUMP: May I usurp the floor for just one further word? This is by way of post-script. Throughout my learned address you will recall that several times I referred to a question which had not been answered as yet, so far as I knew, by any of those learned in this branch of the law. The question, however, has been put before, if I am not mistaken, and if I am, Governor Slaton and Mr. Smith will correct me. The question, gentlemen, which I had in mind was that put by the Governor of North Carolina to the Governor of South Carolina.

CHAIRMAN BROSMITH: Mr. Smythe Gambrell, have you any announcements you would like to make? Would you mind stepping up here, please, where we all can hear you? Gentleman, Mr. Smythe Gambrell.

MR. GAMBRELL: President Smith suggested that it might be well to announce that the open forum on Air Transport Insurance will be held commencing at 2:30 this afternoon in the Berwyn Room. Some of those who will participate in this forum must leave fairly early this afternoon and it is hoped that those who expect to attend will be there promptly at 2:30.

CHAIRMAN BROSMITH: Mr. Wilbur Benoy, do you wish to make any announcement? Mr. Wilbur Benoy.

MR. BENOY: The Practice and Procedure Committee is going to run in competition to Smythe Gambrell's Aviation Committee this afternoon, beginning at 2:30. You may not know it, but at the present time a special committee of the Supreme Court of the United States is considering amendments

and additions to the Rules of Federal Civil Procedure for the district courts. We have already found, this committee that has been studying this matter for two years now, both this and the American Bar Insurance Section Committee, that there are several questions in these rules which need correction and amendment. The situation that presents itself is about like the fellow who buys a pair of shoes without trying them on and he gets bunions and corns as a result of it. These rules are being drafted primarily by a certain Judge Charles E. Clark of New Haven, Connecticut—I am talking about the amendments now—and James Moore of Moore's Legal Practice and Procedure of Yale University. You fellows are the ones who are in the rough and tumble of the court fights and these bunions don't show up until after the rules are formulated and announced. Now, we are talking about getting some of the bunions out of the present rules and we ask you to come in and tell us from your own experience what bunions you have found. So will you be kind enough to attend the Practice and Procedure Committee Forum this afternoon at 2:30. We are going to hold just as long as it is necessary to hold and we are going to take a copy of that record that you fellows make this afternoon and transmit it to Judge Clark for his consideration.

We have already put this report which is printed here—and you are entitled to copies of it and I hope you will take them and use them—we have already put that in the hands of Judge Clark and Mr. Moore and I have his letter saying, "We thank you for your letter of June 22," and so on. "I am very glad, indeed, to get the report of your Committee to the Insurance Section of the American Bar Association"—that is the way it was submitted—"on proposed amendments to the Rules of Civil Procedure. Professor Moore and I have already discussed some of your suggestions but I am glad to have them in this complete form and will report them to the Committee in due time.

In going over them again, I am interested to note particularly certain suggestions such as those concerning Rule 14—that is third party practice, gentlemen—which involves matters we have been seriously considering. I am also pleased to see that no suggestions are made as to the great bulk of the rules and that we are justified in concluding that the insurance lawyers in general think well of the rules and the pleadings system they contemplate.

Come out and assist this Committee in laying your desires before the Special Committee of the Supreme Court. Thank you.

PRESIDENT SMITH: I wish to present to you an old friend who attended the first convention that I ever attended, when we met in the Stevens Hotel along about 1930, and who I have always been glad to see at our conventions, my friend Fred S. Knight of The Weekly Underwriter of New York. Fred, will you stand?

I next want to present to you for inspection purposes, Mr. J. C. O'Connor of The National Underwriter, who claims that there is some advantage in his publication. Each claims that the other has the best publication. Mr. O'Connor. (Applause).

I didn't take merely the recommendation of my friend, Bob Noll, about the forensic abilities of Mayor Stewart of Cincinnati. This is the first time that he knows I was checking up on him but it probably is not the first time that Bob has been checked up on. I inquired of people who had heard Mayor Stewart's speech, because I know how prone we are to show a perference for our own friends, and I was told by a man who had heard him speak that he was about the most charming after-dinner speaker that they had ever listened to, and I believe that is true, judging from what I have heard since I have been here.

We are not going to have any formality at the banquet tonight. It is not exactly going to be a banquet; it is rather a dinner at which we can gather, but we will have a lot of singing and a lot of fun making of one sort and another. May I say also that the photographers will be here and those of you who would like to see yourselves photographed with distinguished members of the profession, or even with some of the home office counsel men, you can arrange that just before the banquet.

We are going to have only Mr. Stewart's after-dinner speech and I am confident that each of us will enjoy that, even as we have enjoyed the magnificent speeches we have had here this morning. There will be no reservations at the banquet tonight so far as tables are concerned, but you will have to buy your ticket at the registration desk as early as possible.

MR. SLATON: May I make a motion through you, Mr. Smith? We have had a very

able President who has guided us in our deliberations but there has been an ethereal influence over his life that has guided and illuminated it. Mrs. Smith has been very ill and it was doubted for a time whether she would recover. She is on the way to recuperation. I therefore move, Mr. President, that a telegram be sent to her at Raleigh, North Carolina, expressing our affection, our best wishes for her speedy recovery, and sending to her the love and best wishes of this Association.

JUDGE POWELL: I second the motion.

MR. WEICHELT: I would like to add an amendment to that motion to the effect that those who have charge of sending the telegram send a very beautiful additional expression in the form of F. T. D. flowers.

CHAIRMAN BROSMITH: Will you accept the amendment, Governor?

MR. SLATON: Why, certainly I do, but the flowers that are going to be contained in the message will never lose their friendliness.

CHAIRMAN BROSMITH: Gentlemen, the motion has been made and seconded. Does anyone wish to discuss it? If not, I will call for the vote. Those in favor, please say "Aye." Opposed. It is unanimously carried. Mr. Secretary, and you will see that it is done?

SECRETARY MONTGOMERY: I will, sir.

PRESIDENT SMITH: I of course did not know just why Mr. Brosmith decided to usurp the functions of the presiding officer at that moment, as he requested of me, but I appreciate exceedingly his and your thoughtfulness. I don't believe there is any association that Mrs. Smith has ever been more interested in than this one and I thank you for your thoughtfulness, each of you.

On last Tuesday, I had no idea of being here. I had turned over to Mr. Brosmith the handling of the meeting, and then Mrs. Smith said she thought I should come, because after three weeks of deliriousness and unconsciousness, she recovered to that extent, and one of the first things she thought of was this Association and she insisted I come, and the doctor said that he thought I should come because otherwise she would think that her improvement had not been as pronounced as I am happy to say it has been during the last week. Again, may I thank you, and I know that when she is fully recovered, she will remember her friends in this Association as probably she will remember no other group with which she comes in contact. I thank you very much.

Are there any other announcements from anyone? If not, we will now adjourn until the afternoon.

Recessed at 12:40 p. m.

* * *

WEDNESDAY MORNING SESSION

The Wednesday morning session was called to order at 10:25 o'clock, President Willis Smith presiding.

PRESIDENT SMITH: The meeting will come to order and I will ask those of our friends in the rear of the hall to come forward. We have a report from the Executive Committee with respect to a minor change in the By-Laws and I am going to now call on Francis Holt of Jacksonville, Florida, a member of the Executive Committee, who will make a report on this amendment to the By-Laws. Frank, will you come forward and make your report?

MR. HOLT: Mr. President and gentlemen:

This proposed amendment to the By-Laws is recommended by your Executive Committee in order to coordinate the By-Laws provision with the interpretation that the Executive Committee has long placed upon the By-Laws as they exist in their present form. The point is this. There are many lawyers, some home office counsel and some in the field, who do have occasion to represent and act for insurance companies in matters that are wholly disconnected from the problems of insurance litigation in its strict sense, such as the representation of insurance companies solely in the matter of foreclosing mortgages, in connection with their investments, or in the examination of land titles, precisely the same type of work that would be done for any other client, whether it were an insurance company or not; and so it is that your Executive Committee recommends a change from the previous language declaring the general qualifications for membership in the Association, in describing the character of work that a man must do in order to be eligible, after first mentioning his residence within the United States or the Dominion of Canada or the Republic of Mexico or the Republic of Cuba, to provide that if he has those qualifications and is actively engaged in the practice of law within the territory comprising any of the political units enumerated above in this article, is of high professional standing and who

devotes a substantial portion of his professional work to the representation of insurance companies, now, here is the only change, "in connection with problems and litigation concerning claims arising under insurance contracts," then he shall be eligible. Otherwise, Mr. President, there is no change in the existing By-Laws and I move, sir, the ratification by this meeting of the change as recommended by the Executive Committee.

MR. BAYLOR: I second the motion.

PRESIDENT SMITH: You have heard the report and the motion and the second. Is there any discussion or are there any inquiries from any of you gentlemen as to this proposed amendment to the By Laws?

MR. HOCKER, JR.: Read the amendment again, please.

MR. HOLT: ". . . is of high professional standing and who devotes a substantial portion of his professional work to the representation of insurance companies"—now, this is the change—'in connection with problems and litigation concerning claims arising under insurance contracts'."

MR. WEICHELT: "or litigation" I think would be better, wouldn't it?

There is just one suggestion I think would clarify it. It reads "and litigation concerning claims." I think if that adjective were changed from "and" to "or," or it were changed in some way so it doesn't limit it to claim problems, it would improve it.

PRESIDENT SMITH: Well, of course, neither the Chairman nor the Committee has any preference as to whether you use the word "and" or the word "or," so far as I know, if it is the consensus of opinion of this group that the "or" is preferable to "and." Frank, do you have something on that?

MR. HOLT: I see no objection to it at all, sir. It is merely a choice of words. I think it means the same thing.

PRESIDENT SMITH: If someone wishes to offer an amendment that the word "and" be changed to "or," we will try it that way for a while and see how it works. George, do you offer that as an amendment, to change the word "and" to "or?"

MR. A. B. KELLY: I move the word "and" be changed to "or." I think it is a little clearer that way.

PRESIDENT SMITH: Mr. Kelly of Chicago offers an amendment changing the word "and" to "or." Is there a second to the motion?

MR. HOLT: The precise language under consideration is in the last six lines of the printed article on page 10 of the Journal and, going back to the point a couple of lines above, where it says "and who devotes a substantial portion of his professional work to the representation of insurance companies in connection with problems and litigation concerning claims arising under insurance contracts," that is the only change. The original provision of eligibility with respect to the status of the man himself has not been changed at all from what it was in the original By-Laws.

PRESIDENT SMITH: Well, gentlemen, you have heard the motion that the word "and" be changed to "or." It seems to me there could be no objection on the part of the Committee. Do you think so, Frank?

MR. HOLT: I certainly do not, sir.

PRESIDENT SMITH: I believe someone made a motion that the word "and" be changed to "or." Was that your motion, Ambrose Kelly?

MR. A. B. KELLY: It was.

PRESIDENT SMITH: Therefore, I am going to put the motion on the amendment to the Committee's report, and if that is adopted, we will then call for the adoption of the amendment. Is there any further discussion on the advisability and usefulness of changing that? Those in favor of the motion will say "Aye." Opposed, "No."

This report of the Committee and the amendment now stands before the house, the word "and" in line blank, whatever the line is—Mr. Knight, will you tell the reporter just what line it is?—the word "and" having been changed to "or" in the Committee's report. The question now recurs upon the adoption of the report of the Committee on the proposed amendment, with the amendment just adopted by the Convention. Is there any discussion of that? If not, those in favor of the amendment will say "Aye." Opposed, "No." It is unanimously carried and the record will so show.

MR. KNIGHT: It is line 15, Mr. Reporter, as it is published in the Journal.

PRESIDENT SMITH: I thank you, gentlemen, for calling to the attention of Mr. Holt and the Chair that change, which probably is a little bit better.

Is there any other new business to come before the Convention? The reason I am changing the order of business is of course,

manifest for all. There are still men coming into the hall who were late in getting breakfast on account of the hotel's inability to serve them, of course, promptly, and I want them to be able to hear the speaker this morning.

Is there any unfinished business that anyone has in mind? So far as I know, none has been called to the attention of the Chair.

We will now have the report of the Committee on Memorials, by Mr. Mayne. Walter, will you come forward and make your report, please.

Mr. Mayne presented the Committee report as follows:

Since our last convention at the "Greenbrier" in 1941, 29 of our devoted and faithful members of our Association have gone beyond to their great reward.

Among them were men who served this Association in various offices and capacities with a fervent desire at all times to help our Association to grow and succeed. All were honorable men of high character and integrity. Their devotion to duty and their accomplishments in their respective communities through the county are well known and will be our future inspiration.

In respect and reverence to their memory we pause to read their names so that it may be inscribed on a page of the permanent record of our annual convention proceedings

1. William R. Eaton, Denver, Colo.
2. W. L. Bourland, Chicago, Ill.
3. Guy Edwards, Philadelphia, Pa.
4. Harvey T. Harrison, Little Rock, Ark.
5. Julian P. Harrison, El Paso, Texas.
6. Jesse E. Higbee, LaCrosse, Wisc.
7. Charles M. Howell, Kansas City, Mo.
8. Jared P. Huxley, Youngstown, Ohio.
9. James A. Herbert, Boston, Mass.
10. Ivan E. Kerr, Detroit, Mich.
11. Clifford A. Kingsley, Providence, R. I.
12. Harry P. Lawther, Dallas, Texas.
13. J. C. Loose, Mauch Chunk, Pa.
14. Perry F. Loucks, Watertown, S. D.
15. Edward R. Meyer, Zanesville, Ohio.
16. Jesse A. Miller, Des Moines, Iowa.
17. George L. Naught, New York City.
18. E. Clem Powers, Atlanta, Ga.
19. William O. Reeder, St. Louis, Mo.
20. William S. Rial, Greenburg, Pa.
21. Frank J. Roan, Newark, N. J.
22. William Sampson, Harlan, Ky.
23. John R. Schindel, Cincinnati, Ohio.
24. H. H. Schoepp, St. Paul, Minn.
25. Harold P. Small, Springfield, Mass.
26. Edwin F. Smith, Jersey City, N. J.
27. Ralph Stewart, Salt Lake City, Utah.
28. Leo Waxman, Elmira, N. Y.
29. William Yancey, Birmingham, Ala.

Respectfully submitted,

WALTER R. MAYNE, *Chairman*
ELIAS FIELD
H. MELVIN ROBERTS.

PRESIDENT SMITH: I am sure the members of this Association, each of us, regret we shall have no longer and no more the companionship and friendship of these men whose names have been read. All of them rendered service to this Association and were held in high esteem by the members of this group. Some of them rendered distinctive service to this Association and I am delighted, indeed, that Walter Mayne had the thoughtfulness and the foresight to suggest to your President such a proceeding as we have just been through. I have no idea of the number of those who passed on within the last two years, but certainly we could make no mistake in pausing for a few moments to do homage and honor to their memory.

MR. MAYNE: Mr. President, there may be some names that we did not know about. If there are and any of you know of any one of our brothers who has not been mentioned in the report, I would ask that they give that information to the Secretary so his name may be also added in the Minutes of the Convention.

PRESIDENT SMITH: Each of you will bear in mind the admonition of Mr. Mayne.

Mr. Yancey, would you like to say anything with respect to the Journal at this time, or is there anything you wish to report further than you already have?

MR. YANCEY: No, Mr. President, nothing, except I want to thank the membership for their assistance and the officers for cooperating with me.

PRESIDENT SMITH: Gentlemen of the Convention, as all of you know, we have a By-Law that prohibits any resolution thanking any member for what he has done but, so far as I know, there is no reason why I should not say a word expressing the thanks of this administration for the continued efforts of your friend and my friend, George Yancey, in the conduct of the Journal. The job he has is a monumental one, to four times a year publish a periodical that takes the place and has the standing that our As-

sociation Journal does have, and George Yancey has worked untiringly in the publication of our magazine and I wish to say to you that, having had two years of experience with him, I can well appreciate, as can former Presidents, just what an undertaking that is and how gloriously George performs his part in that undertaking. (Applause).

Now, gentlemen of the Convention, I happen to be one of the members of the legal profession who knows little, if anything, about marine insurance. It seemed to me when I was preparing this program that there were men who knew something about it in our group and there were others who would like to know more about it, and that in this period of wartime, when we have read so much and seen so much and heard so much about our maritime power, we should have some paper on marine insurance, and therefore I undertook to secure someone who knew something of the history of this division of insurance and who could make to us an address on this subject and, after canvassing those who had been recommended, I finally decided to invite to address you this morning on Marine Insurance, an essential industry for a maritime nation, Mr. Henry Reed, general manager of the Insurance Company of North America, which, as I understand it, is the oldest insurance company in America. I inquired of my friend, Allan Brosmith, if his company or other companies would consider that that was undue advertising on my part of the Insurance Company of North America and Allan remarked that since I didn't represent that company and had none of its money in my pocket and if, in fact, it was the truth that it was the oldest insurance company, old enough to be the father, or maybe the grandfather, even, of The Travelers, that I had his permission to announce that it was the oldest insurance company in America.

We take pleasure this morning in having with us Mr. Reed and I now present him to you. Mr. Henry Reed of New York City. (Applause).

(The address of Mr. Reed will be found on page 47).

PRESIDENT SMITH: We are very much indebted to Mr. Reed for the presentation he has made this morning and, on behalf of the Association, Mr. Reed, and for the Association and every member present, I wish to thank you very much for the paper which you have read to us.

MR. McALISTER: Mr. President, I have the prizes in connection with the photographic contest. I don't know whether Mr. Carey told Mr. Rowe about it or not. Mr. President, the prizes that were awarded for the titles that were on the pictures posted on the board in the lobby were awarded by the Committee. We only regret that we couldn't give everyone a prize. It appears from the titles submitted that the most photogenic member of the Association, at least of those on the board, is undoubtedly Oscar Brown. Everybody had a different title for Oscar, in fact, both pictures of Oscar. I think he might even have done better as a movie star than as a lawyer. They all liked Oscar.

The Entertainment Committee, of which I am a member, and also the Trap Shooting Committee, were both seriously handicapped. On that Trap Shooting Committee, we were informed that shotgun shells had gone to war and, further, there is a city ordinance in Chicago to the effect that amateurs are not permitted to use firearms. (Laughter). Pat Carey and I had some correspondence about it and, realizing the transportation limitations were going to hamper the golf tournament, Pat suggested to Mark Townsend and myself that we combine my Committee on Trap Shooting with Mark's Committee on Golf and make it African Golf and change the name to the Crap Shooting Committee. However, we did have this contest and we were quite pleased to receive a large number of entries.

We chose only one for each picture for which a title was submitted. I think possibly half the pictures had a title submitted and we chose the one that the Committee thought was best and most suitable for that picture. There were some others that were almost equally as good but some were a little bit longer and so we tried to pick out the ones that, in our opinion, were the most suitable and appropriate. We have the prizes here and if the five winners will come forward as I call their names, we will be very glad to present those prizes. The winners, five in number, are as follows:

Joseph W. Popper of Macon, Georgia; Joseph R. Stewart of Kansas City; Wayne Ely of St. Louis; Mark Townsend, Jr., of Jersey City; and Elias Field of Boston. Will those five men please come forward. These prizes are all the same. Gentlemen, the Committee sort of pulled, well, I don't know what kind of a trick it was; I think it was a trick that would meet with the thorough approval

of Mr. Morgenthau. We have the prizes here. The trouble is that in order to get anything, we are going to make them spend more money. We have here, gentlemen, $5.00 in War Stamps for each of you, which will take $13.75 apiece more to get a Series "E" Bond.

Might I add, gentlemen, that those of you who are here who found yourself in the rogue's gallery out there, first of all, I would like to have you take the pictures home, for two reasons. Bill Jainsen said he was going to sue me for libel and I explained that the camera couldn't lie. He said he wasn't complaining about the camera lying, that he would be proud if he looked like that, but it was my putting it on the board and the publication thereof that caused the libel and, in his opinion, the greater the truth, the greater the libel. However, we would like to have you take the pictures, if you care to, and if there are any of the boys whose pictures are on the board who are not present at the convention or who have already returned home, please feel perfectly welcome to take the pictures home with you and give them to them. Thank you. (Applause).

MR. MAYNE: Mr. President, I would like to ask Dave what about the titles that he chose?

MR. McALISTER: The titles are typed and pasted on each of the pictures.

MR. MAYNE: Can't you tell us now?

MR. McALISTER: I will tell you the title of No. 2, Oscar on the 18th green digging. The title for that we chose was "A Cheerful Loser."

PRESIDENT SMITH: Thank you, Dave, for your Committee report and for the manner in which you presented it, and I might suggest to you and the members of the Committee that if Wilson Jainsen should attempt to sue you for libel, if you can maneuver him into getting down to North Carolina, rather than the greater the truth, the greater the libel, in our state the truth is a complete defense, whether the person who has been libeled likes it or not.

MR. McALISTER: I am not particularly worried. The case can be settled cheaply. I have General Liability in the Hartford.

MR. JAINSEN: I will say that does not cover slander.

PRESIDENT SMITH: I wish at this time and while the Secretary is approaching, on behalf of all of you, I am sure, to express this Association's thanks to the hotel management for the very excellent service that they have given us under the handicaps that every hotel has to work under at this time. It seems to me, judging from the expressions I have had from a great many of you, that all of us feel the hotel management here at the Edgewater Beach has done a fine job of entertaining us and, unless there is some objection, I shall convey to the management the thanks of this Association.

I wish also on behalf of this Association, and particularly my administration, to thank Dick Montgomery for the work that he has done for this Association. As most of you know, Dick declined to any more become a candidate or even to accept the office of Secretary, which he has held for a good many years. He has worked untiringly, his devotion to me has been complete, and I wish to publicly say to Dick here and now that I personally and as President of this organization will ever remember his kindnesses and his thoughtfulness and his desire to assist me in every way he could. I wish to thank him very much for what he has done. (Applause).

I wish also, ladies and gentlemen, to thank each of you for the attendance that you have shown at these meetings. You know, when you are the head of an organization and you invite some distinguished man or woman to address that organization and then have the members remain away from the hall, it is a little embarrassing to the presiding officer who has given the invitation. During this convention, it seems to me that we have had an unusually large percentage of the membership always in the hall, interested in what has been going on, and that strict attention has been given to each of the speakers. Of course, I realize that a large part of that, in fact, most of it, was probably due to the fact that we had at this convention a high order of speakers, who talked about subjects that we are all interested in and talked about those subjects interestingly, and I wish to thank each of them who have appeared upon this program and made possible the successful convention which I hope you feel that we have had here in this hotel.

I wish now to hear the report of the Nominating Committee. Mr. Crawford.

MR. CRAWFORD: Mr. President and members of the Association:

The Nominating Committee has the following report to make:

For President—Pat H. Eager, Jackson, Miss. I would like to add that I have been connected with this Association for some ten years. For a large part of that time, I have had something to do with the projects of the Association, and I want to say that the unanimity which which the name of Pat Eager came up before this Committee is something that I have never had the pleasure of hearing before.

For Secretary—David I. McAlister, Washington, Pa.

For Treasurer—Robert M. Noll, Marietta, Ohio.

Vice Presidents—Robert P. Hobson, Louisville, Ky., Leslie P. Hemry, Boston, Mass., Lon Hocker, Jr., St. Louis, Mo.

For the unexpired term of William O. Reeder on the Executive Committee, Kenneth B. Cope of Canton, Ohio.

For the three members of the Executive Committee for a term of three years, the following gentlemen:

Hugh D. Combs, Baltimore, Md.

W. Percy McDonald, Memphis, Tenn.

Clarence W. Heyl, Peoria, Ill.

The members of the Committee signing this report are John L. Barton, Wilson C. Jainsen, Thomas Bartlett, Gerald P. Hayes and your Chairman, Milo Crawford. I now turn this over to the Secretary.

PRESIDENT SMITH: You have heard the report of the Nominating Committee. Are there any further nominations? If not, the Chairman of the Nominating Committee, Mr. Crawford, moves that the Secretary be instructed to cast the ballot unanimously of this Association for the nominees named in the report. Those favoring the motion will say "Aye." Opposed, "No." The "Ayes" have it and it is so ordered and, Mr. Secretary, you will cast the ballot.

SECRETARY MONTGOMERY: I have done so, sir.

PRESIDENT SMITH: The Secretary has cast the ballot for the nominees set forth in the Committee's report.

I would now like to have the President-elect, the new officers and the new members of the Executive Committee approach the Chair, and I will ask that the President-elect be escorted to the Chair by Judge Powell and George Weichelt, lest he may not know the way.

(Judge Powell and Mr. Weichelt escorted President-elect Eager to the platform. Applause as all stand).

Now gentlemen, I wish that the officers and the new members of the Executive Committee would please approach the Chair and stand and be recognized. Now, gentlemen, will you turn and face the audience and see if they approve of you. (Applause). I present to you your new officers and Executive Committeemen.

Now, ladies and gentlemen, it is with great pleasure that I turn the gavel, embodying the authority of the President of this Association, over to your friend and my friend. I observe with perfect composure the fact that regardless of what may be said, the South is still in the saddle, and I am delighted that in choosing your President for the next two years, or six years, depending upon how long the war lasts, you have reposed your confidence in a man who has always done his best for this Association. Since I have been President, I do not recall a single instance when I called on Pat Eager to perform a service for this Association that he hasn't performed it cheerfully and well, and I am sure that by your expression of approval of the Committee's action in naming him, you have demonstrated to him beyond any hope he even might have had how earnest is your wish, how great is your confidence and how supreme is your hope that under Pat Eager's guidance, this Association may go forward to new and greater heights. It is with great pleasure that I present to you your new President, Pat Eager of Jackson, Mississippi. (Applause as all stand).

PRESIDENT-ELECT EAGER: Mr. Retiring President, retiring Vice Presidents, members of the Executive Committee and these excellent new members that you have so graciously placed here to succeed these other fine gentlemen that are retiring, you lovely and gorgeous ladies who are forever the inspiration of all of us now and forevermore, amen! members of the Short Snorters' Club, and members of the Association:

It is the truth when I tell you that you overwhelm me by your kindness. With all of the wealth of fine material available, why in the name of high heaven you could want to go to a little Southern town and pick a country boy who failed to possess, who did not possess the two absolutely essential qualifications for this office is more than I can understand. In the first place, as is demonstrated to anyone who knows me, I have never attended a law school. I say that because somebody would immediately say they thought so.

I will relieve you of that. Neither have I even been the proprietor of a cocktail party. How in the world I am going to function now it is difficult to understand. It will be a change of tradition, to say the least.

I accept this position with many thanks and with great reluctance, knowing my failings and, honestly, my inability to properly succeed the distinguished men who have filled this position ahead of me, but I do so only with full confidence in the fine help that the presiding officer of this organization always will receive from the membership, from the Executive Committee and from the retiring President, and without the aid of those, certaintly I could not function at all.

I pay a particular tribute to the retiring Vice Presidents, and I will refer to the senior Vice President, Allan Brosmith, on behalf of the trio. Here is Allan Brosmith, who will not be on our Committee next year, who will be greatly missed, a leader of men and a follower of women. (Laughter).

Mr. President, is there any other business?

MR. OSCAR BROWN: I request, Mr. President, the privilege of addressing the retiring President. Willis Smith, on behalf of this Association, I have been asked to say just a word to you about the work you have done in connection with the customary presentation to you of the gavel which has been the expected property of every retiring President. The gavel that we have prepared for you is just the same sort of gavel, a piece of wood and a strip of metal, and of the same size that others in your position have received, but we want you to feel that in giving you this gavel, we are trying to give with it something that there never has been occasion to give to a former President and we have never felt that we should give it.

We feel that your job, done by you when you have been beset by troubles at home and have had with you the dread that so many heads of families have had as to what this war is going to bring to them personally, the long continued effort that you have had to make to carry through this administration because of these war conditions deserves a better thing than this piece of wood and strip of metal, and we want you to know that in giving it to you, we are trying to express to you that thought, that this gavel to you, from us, should signify a really worth while contribution to the really outstanding job that you have done during the past two years in guiding this Association as well as you have and arranging, under the great difficulties that have presented themselves, this wonderful meeting. (Applause as all stand as Mr. Brown hands the gavel to retiring President Willis Smith).

MR. SMITH: Mr. President, Mr. Brown, let me thank Oscar Brown most sincerely, not only for this piece of wood and strip of metal but also for the affection which I know it brings to me. Certainly there is no grander group of gentlemen anywhere to preside over than the men who compose this Association, and certainly no President ever had finer cooperation or better help from his predecessor than I have had from Oscar Brown. He has never failed to respond when I have called on him to give me the benefit of the guidance of his wisdom and his judgment and his discretion, and if during the past two years the work of this Association has gone fairly smoothly, a large part of the credit goes to my predecessor and friend, Oscar Brown, who has never failed to assist me when called upon.

And so, Oscar, in addition to prizing this gavel as a gift from the Association, I shall always prize the fact that it was presented to me by you, sir, who did such a noble job for this Association, and I thank you very much. (Applause).

PRESIDENT EAGER: Are there any other announcements, gentlemen, by anyone before we adjourn? We are coming to the hour of final adjournment. I call your attention to the fact that the Executive Committee will convene at 2:30 and I ask that each of you earnestly and zealously see that the reputation maintained by that Committee for the last two or three meetings of a 100 per cent attendance be upheld. I assume we will meet in the Berwyn Room, right at the end of this corridor. We will convene promptly at 2:30. Please bear that in mind.

The Chair will now recognize Mark Townsend, Jr., of Jersey City. That is where he was the last time I heard from him. You still live in Jersey City, don't you, Mark?

MR. TOWNSEND: We had somewhat of a golf tournament and the Committee, as is appropriate, has some prizes in the form of War Stamps. First, the winner of first prize is Mr. Thornbury. Is he here? (Applause). The score was 48. He had two sub-par rounds.

Don Stewart and F. G. Warren tied for second with scores of 51.

Milton Baier won fourth prize, $3.00. He had the worst score, 87.

PRESIDENT EAGER: Thank you very much, Mr. Townsend.

The last and final call, ladies and gentlemen. Are there any other announcements? I wish you all a happy return to your homes. Bear in mind that we should seek ourselves to maintain personally our high conduct, so that when these boys that have been so finely lauded by the two wonderful speakers, Mr. Kemper at a business session and Mr. Stewart last night—let us be sure that nothing we do will place any obstacle in the way of these fine boys when they come back, and let's be here to help them not only win the war but win and maintain the peace. That is the big thing for all of us until the war is over.

I hope all of you will come back next year, wherever we meet, and bring your friends with you, and tell them what a wonderful place this is to come. Good-bye and Godspeed to all of you. This meeting is adjourned.

Final adjournment was taken at 11:55 a. m., Wednesday, June 30, 1943.

The Organized Bar And The War

By George Maurice Morris
Washington, D. C.
President of the American Bar Association

AMERICA'S organized bar is making a war record which is without precedent in the history of any nation. That record is being written in the "Good Will Book" of the American people. That record should stir with pride every lawyer who thinks of himself as a member of a profession and not merely as a practitioner. Parts of that record may also serve as a chart on a course which lies ahead of us.

But first let us take the making of the record.

Under the direction of their bar associations, literally thousands of lawyers, entirely apart from their personal affairs, are contributing to the winning of this war. Daily these members of the bar are giving in what Abraham Lincoln described as the lawyers' "stock in trade," namely, their time. They also sacrifice their unrecorded, but heavy, out-of-pocket expenditures. In addition, they have pledged the resources of their bar associations to winning the home front aspect of this war.

The organization for this purpose is what might be called "a staff and line" set-up. The staff work is done primarily at the national level and the line implementation is carried out at the state and local levels.

The American Bar Association, as the representative organization at the national level, undertakes to do the staff work through a committee on Coordination and Direction which supervises 11 divisional committees. A recitation of the names of these "staff" groups and a limited statement of their jurisdiction may give some, even though inadequate, idea of their stations in the lawyer's home front.

First there is the *Committee on American Citizenship*. The immediate project of this group is promoting naturalization rites and ceremonies calculated to give to new citizens and to their communities proper appreciation of the privileges and the duties of citizenship.

The *Bill of Rights* Committee is actively concerned with preserving the legal rights of individuals and minority groups against the hysteria of war time.

The *Civilian Defense* Committee has already compiled and published the scholarly yet practical Civilian Defense Manual. The Office of Civilian Defense has distributed this book throughout the Civilian Defense system. This Committee works not only with the Office of Civilian Defense but also with the Office of Price Administration.

Courts and Wartime Social Protection is a committee dealing with the legal procedures requisite to eliminating venereal disease, the largest single cause for disability of military manpower.

Custody and Management of Alien Property covers the field—steadily growing in importance—concerning administration and judicial review in handling the alien properties which the United States has seized.

Improving the Administration of Justice. This is a continuing project of the bar which has new aspects brought out by the war.

International Legal War Problems. The scope and variety of this area is virtually as broad as one can imagine.

Military Offenses treats with the military and civilian procedures for handling crimes and misdemeanors and the reconciliation of conflicts.

Labor Employment and Social Security is pitching its instant interest on procedural and administrative aspects of manpower controls and in stimulating a war labor supply from the bar.

The *Public Information Program* is a speaker's organization with more than 600 state and local directors working in cooperation with speaking groups of lawyers in all parts of the country.

Then there is the *Committee on War Work* of which more will be said in a moment.

The American Bar Association maintains a full-time personnel in Washington to service this group and allied state and local bar associations.

These "staff" divisional committees get information, answer questions, generate ideas, plan programs and disseminate these data to the state and locals. This enterprise acts as a "clearing house" to advise the lawyers in state "A" what the bar is doing in states "B" and "C"; to report which methods are proving successful and which have failed.

What this group does, generally, is to propose. The state and local bar associations dispose. Its functions are suggestive, not directive. The men in "the line" and

on the spot make the decisions as to application.

Time will not permit a description of the various ways in which the state and local bar associations are handling the "line" end of this arrangement. It should be necessary to say only that "staff" plans would be no more valuable to the lawyers' effort than would be actual battle and campaign plans without an army to implement them. It is the men at the fighting front who win the day.

Under the title of Committees on National Defense, the national, state, and local bar associations are everywhere known to have done a masterly job in giving voluntary personal aid to the Selective Service system. Their "Manual of Law for Advisory Boards to Registrants" has been distributed in hundreds of thousands of copies. It is a veritable Bible for the draft.

The quality of the accomplishments of the War Work Committees (they succeeded the Committees on National Defense) of the national, state and local associations on behalf of men in the armed forces and persons dependent upon them is officially recognized. This is directly evidenced by War Department Circular No. 74. That order sets up, under the sponsorship of the War Department and the American Bar Association, the Legal Assistance Offices. The United States War Department does not lightly enter into joint sponsorship.

The Legal Assistance Office arrangement is in effect in all of the army camps, posts and stations in the United States. The plan provides that at each of these locations there shall be an office manned by lawyers who happen to be assigned to that command. To this office, any enlisted or commissioned man in the command may bring his personal legal troubles. Whenever his problem may be handled by an application of the legal wisdom born of experience, or by an examination of the statutes which does not involve research or documentation, the matter is disposed of then and there. Where, however, the matter involves a formal legal opinion, looks to litigation or extensive correspondence, or where the man concerned prefers to talk to a civilian lawyer, the Bar Association nearest the command maintains a committee to perform these functions.

This plan jointly sponsored by the Army and the Bar, is unique with this war. It has generated the mounting enthusiasm of lawyers both in uniform and out of it. It is not too early to say that the results are justifying our most extravagant hopes.

Plans are currently under way for adoption of an equivalent legal assistance office arrangement in the Navy Department.

On the other end of this great undertaking, namely, looking after the legal affairs of the dependents of the armed forces, the job is entirely that of the civilian lawyers. In virtually every community of any size in the whole country dependents of armed forces men may ask for legal advice and get it, without charge if necessary.

As time has passed, inquiries have shifted from property questions to domestic relations problems. Domestic relations, generally, appear to be increasingly active, particularly in the aspects of addition and division.

Some time ago, a commanding officer wrote to a lawyer in a distant city engaging him to secure a divorce for a soldier under the commanding officer's direction. The lawyer did not act with expedition. The Colonel complained. The lawyer's reply was "What's the hurry? This war is going to last some time." To this the Colonel answered "We know that, but in the meantime, every month out of my man's $50 pay his wife is receiving $22 and she is using the money to support a man with whom she is living. My soldier's enthusiasm for the continuance of this arrangement is limited."

The other day, we had our first report of a case for a member of the Women's Army Auxiliary Corps. This young woman reported that she had married, but immediately after the ceremony the bridegroom became violently insane. Her legal assistance officer wanted to know if annulment was possible. There may be a moral in connection with marrying a WAAC and displaying insanity, but it would not do for me to attempt to draw such a moral.

The value of this work the organized bar is performing for our men at war, either directly, or indirectly through their dependents, should be apparent. Battles are won by men whose minds are free to concentrate on winning them.

An additional aspect is that public understanding of the lawyer's function and good will toward the bar is developing at a rate that has not been known in our time.

* * *

But some day the fighting will cease. What shall the bar have to offer to the community then? May we have reference, as a chart for the future, to this cooperative contribution the organized bar is now making?

In this audience there is probably no one who does not have ideas respecting a post war world order. We may follow your ideas, or we may "finesse" with Ely Culbertson. We may make "one world" with Wendell Willkie. We may reduce our sovereignty with Mr. Justice Roberts, or we may just say "globaloney" with Clare Luce. Whatever the style of international relationship we pursue, however, administrative and judicial procedures are fundamental to the functioning of that relationship. The adequate administration of justice is as indispensable an element to such a political fabric as the warp is to a cloth fabric.

This is equally true, if not more true, of the domestic scene.

Millions of men and women (the number has been estimated as high as 20 million) in the armed forces and war industry must be fitted back into a peace time economy. Even if we blithely assume that an overall plan, or plans, will be agreed upon, what are to be the procedures through which the rights of individuals, employers, employees and unemployed are secured? Granted an agreement as to broad policy, what officers, tribunals or courts are going to decide whether the policy is being correctly applied in the case of Joe Doaks, demobilized soldier, or Mary Smith, unemployed munitions maker? What are the rules of procedure, evidence and ultimate decision by which the interests of Joe, Mary and the community are to be determined?

We are living under a system of governmental controls growing in complexity. Peace should bring at least some relaxation. It would seem reasonable to expect that such relaxation will be, in part at least, progressive rather than immediate. What procedures do we now have which in the orderly administration of justice in a less emergent situation, we should drop? What are those we should follow in the transition period?

Who is going to get this 14 billion dollar industrial plant that the government now owns? Suppose a contest arises between "A" and "B" as to which one shall have title. What manner of man shall make decision? Shall it be some one appointed by executive order, or a judge, a member of a duly constituted court? Will the method prescribed for decision be directed by expediency only, or by the doing of that justice and through those modes to which we are accustomed.

What about the termination of the going contracts for war goods? Are we to have final administrative determination without a right to appeal to the courts? Will contractors be told, as many of them were at the conclusion of World War I, that the retention of a lawyer will be a handicap to settlement of their claims?

Lawyers, as individuals, will not be silent when these problems are discussed. The individual lawyer is going to be in the midst of the struggle pulling for his client as the lawyers have done, and properly, on prior occasions. But the organized bar, that is the lawyers as a whole, has a client. That client is the public and that client's interest is the administration of justice. Isn't it the obligation of each and all of our bar associations to see to it that this interest of their client is not overlooked?

The House of Delegates of the American Bar Association has given thought to this matter. Last March, the House created a Committee on Correlation of Post War Planning. This Committee is charged with surveying, developing and supervising the post war planning of the sections and committees of the American Bar Association. It is difficult to believe that the lawyers, speaking through their state and local bar associations as well as through their national body, will not have something to say on these vital topics. It is difficult to believe that they will be content with merely passing resolutions. Is it not more likely that those groups, advantaged by their war time experience, will take active steps to see that their ideas are carefully weighed by the deciding authorities?

If we are to bring to such efforts at implementation the coordinated power of the organized bar, do we have in the gratifying record now being written something of a chart for such a course?

There is a native caution in most of us against talking too much about the fruits of victory until we have won the victory, but the subject with which we as lawyers are *always* concerned is the administration of justice. Of all manner of men our experience peculiarly qualifies us to advise in that field. A war may be the absorbing problem of a generation but the administration of justice is the demanding task of an entire civilization.

It is never too soon for the organized bar to plan for promoting the administration of justice. We are currently discovering the tremendous potential we have for community good when we coordinate our efforts. Let us not overlook this revelation as we plan for the future.

War Time Developments In Casualty Insurance

By Franklin J. Marryott
Assistant General Counsel, Liberty Mutual Insurance Company, Boston, Mass.

THIS paper has two purposes:

First, to describe developments, in the field of casualty policy forms work which have occurred since September, 1940, with particular reference to the work of the "Joint Forms Committee" and to point out some of the relationships between this work and various war-time problems.

Second, to discuss some of the special problems of the casualty insurance industry which have been brought about by the war and to indicate the solutions which have been reached.

I select September 1940 as my starting point because at our White Sulphur Convention that year you heard a very interesting paper, prepared and presented by my able fellow member of the Joint Forms Committee, Mr. J. Mearl Sweitzer, which described developments in casualty policy forms which had been taking place up to that date. Let me refresh your recollections by recalling that the "Joint Forms Committee" came into existence in 1934 when member companies of the National Bureau of Casualty and Surety Underwriters and of the American Mutual Alliance appointed a committee to prepare what became the "Standard Provisions for Automobile Liability Policies"—now used by all of the member companies of the two organizations mentioned and by many other insurers throughout the country.

The scope of the work of the committee expanded rapidly. Up to the Fall of 1940 the major achievements were the developments of standard provisions for

The Automobile Liability policy (Basic Form),
The Garage Liability Policy,
The Automobile Liability Policy (Schedule Form) (which offers in one form coverages against the hazards of Owned Automobiles, Hired Automobiles and Non-owned Automobiles),

and work was well advanced on the development of standard provisions for a comprehensive form of Automobile Liability Policy and for a comprehensive form of General Liability Policy. We were arguing about the possible wisdom or lack of wisdom in attempting a combination of provisions for automobile and general liability policies into a "Comprehensive Liability Policy."

One of the fundamental tenets of the whole standard provisions program has been a determination to revise whenever revision was indicated and to avoid letting a form become static merely because it was easier to use a familiar form than to prepare a new and better one. This determination has been adhered to with difficulty but I think wisely. Thus, as you will note a fairly substantial amount of the work since 1940 has been by way of refining and perfecting provisions which had been drafted before.

From late in 1940 until the present date sets of standard provisions for the following policies have been promulgated.

Comprehensive Automobile Policy. Effective January 20, 1941.
Comprehensive General Liability Policy. Effective January 20, 1941.
Automobile Physical Damage Policy. Effective July 1, 1941.[1]
Automobile Policy (Basic) Third Revision. Effective October 20, 1941.
Combination Automobile Policy (Basic). Effective October 20, 1941.[1] (A combination of the Physical Damage Provisions and the provisions of the third revision of the Basic Automobile Liability Form).
Automobile Policy — Garage Liability Form — Second Revision. Effective February 1, 1943.
Automobile Policy (Schedule) First Revision. Effective February 1, 1943.
Comprehensive Automobile Policy — First Revision. Effective February 1, 1943.
Comprehensive General Liability Policy —First Revision. Effective February 1, 1943.
Comprehensive Liability Policy. (A combination of the automobile and general

[1]The physical damage provisions are the product of a Joint Committee of the National Automobile Underwriters Association and of the American Mutual Alliance. The combination of the physical damage provisions and the basic automobile liability provisions was brought about by the cooperative action of the Joint Forms Committee and the committee which developed the physical damage provisions.

liability provisions). Effective February 1, 1943.[2]

Personal Liability Policy (Schedule Form). Effective January 11, 1943.

Personal Liability Policy (Comprehensive Form). Effective January 11, 1943.

Residence and Outside Theft. Effective April 19, 1943.[3]

It will of course be quite impossible in this paper to discuss each of these forms. Rather I shall limit myself to a mere listing of the work completed and try to show you how some of it has turned out to be of special importance in connection with wartime problems.

The third revision of the basic automobile liability provisions eliminated the exclusion which used to deny coverage if, at the time of the accident, the automobile was being used "for carrying persons for a charge." In August, 1941, after the provisions had been drafted but before their effective date, the cooperation of the writers of automobile liability insurance was requested by Petroleum Administrator Harold L. Ickes in aid of the then current petroleum conservation program to the end that "ride sharing" be encouraged. We were very happy to be able to say that no one having a standard provisions policy need fear that his insurance would be voided by the use of his car in "ride sharing" even though a charge was made.

The 1941 gasoline shortage was not prolonged but, as more serious shortages developed in 1942, in gasoline, rubber and automobiles, we were again requested to cooperate, this time in the program sponsored by the Office of Price Administrator and by several other governmental agencies, of conserving these vital war materials by seeing to it that car owners lost no part of their liability coverage by participating in ride sharing plans. Again we were most happy to assure our government that the standard policy provisions were so drafted as to make possible such participation without danger of loss of insurance protection.

A further development in the ride sharing program occurred more recently. Late in 1942 representatives of the National Bureau and of the American Mutual Alliance were asked by Rubber Director William M. Jeffers to devise a form of coverage which would be so inexpensive as to deter no one from buying it and which at the same time would protect the insured against claims made by those being transported to or from work in an automobile used under a ride sharing arrangement.

It was believed that the availability of such a coverage would be of material assistance in furthering this feature of the war effort. After several conferences with officials of the War Production Board, the War Department, the Interstate Commerce Commission, the Office of Price Administration, the Office of Defense Transportation and other interested agencies, a special highly restricted form of coverage was devised and announced (March 29, 1943). This gives protection only with respect to claims of passengers being transported to or from work while the car is used under a "Ride Sharing Arrangement." This coverage sells for 50 per cent of the rate for full basic coverage and to date has not been popular. Apparently the reductions in the cost of the full coverage have served to bring its cost down to the point where the difference in dollars between it and the cost of the restricted coverage is so slight as to give only a very limited appeal to the restricted coverage.

At the same time another specialized coverage was announced, likewise as a result of Mr. Jeffers' request. This was to protect employers against their possible liability arising out of participating in the establishment or operation of a ride sharing plan among his employees.

During the early days of the war the carriers were flooded with questions as to whether automobile liability insurance would be affected by the operation of the insured automobile during abnormal conditions such as blackouts or air raids, real or practice. We were able to assure our policyholders that such conditions do not affect such coverage and that if the use to which the automobile is put during the emergency is covered during normal conditions it will be covered during abnormal conditions.

Such questions led naturally to the more difficult one as to how far the carriers were prepared to go in construing their policies to cover abnormal uses of the automobile, made necessary by war time conditions. It did not seem advisable to attempt to answer all ques-

[2]The Comprehensive Liability Provisions were promulgated by the National Bureau in substantially the same form as subsequently announced by the National Bureau and the Alliance.

[3]The Residence and Outside Theft Provisions are National Bureau provisions which were adopted by the Mutual Casualty Insurance Rating Bureau for use in New York and Louisiana.

tions by general assurances of liberal construction and thus, early in the spring of 1942, the Bureau and the Alliance released to the press an agreement that their automobile liability policies would be construed as applying, subject of course to all provisions of the policy,

(a) to any emergency use, by or in behalf of any duly constituted civil or military authority, in furtherance of war or defense activities against recognized enemies of the United States, or

(b) to any use, by or in behalf of the American Red Cross, Office of Civilian Defense or other similar recognized organizations, in furtherance of such war or defense activities.

The same agreement provided that the "Drive Other Car" and "Substitute Automobile" coverage would apply to *any automobile* while used, except in the employment of the individual in question, for such activities as are described in (a) and (b) above.

Many questions were raised as to whether collision losses, which occurred because of blackout conditions, were excluded by virtue of the war risk exclusion of the physical damage policies. This exclusion reads as follows:

> "loss due to war, whether or not declared, invasion, civil war, insurrection, rebellion or revolution or to confiscation by duly constituted governmental or civil authority."

I am not aware of any public announcement on the subject by any company or group of companies but believe that almost without exception the provision has been construed by the companies as not excluding the so-called "blackout loss."

It will be borne in mind that war risk insurance covering automobiles with respect to damage from "enemy attack, including any action taken by the military, naval or air forces of the United States in resisting enemy attack" was made available beginning July 1, 1942 by the War Damage Corporation—the carriers acting as Fiduciary Agents.

It is probable that a gap exists between this coverage and the coverage afforded under the Physical Damage provisions. One example is: War Damage Coverage does not include loss from action of the armed forces of our *Allies* while engaged in resisting enemy attack, but such losses are excluded, it would seem, under the Physical Damage provisions. The exact extent of the hiatus would be difficult to define, but it would be well if action could be taken to make the two coverages dovetail.

Progress along this line has been made in the fire insurance field and the obstacles to prompt action there are certainly far more formidable than in the automobile physical damage field.

The development of vastly improved provisions for "Personal Liability Policies"—both the schedule and comprehensive forms—and for the "Residence and Outside Theft" form—was fostered only very indirectly by the war. The diminishing premium volume in automobile lines, which is directly due to wartime restrictions, has caused the carriers to look to the personal and residence lines as a potential source of new premium volume. The determination to offer thoroughly up-to-date coverages to this great undeveloped market was the real reason why the Bureau and the Alliance committees took time off from strictly war time activities to develop these forms. Even so they have their war time "angles"—e.g. coverage of liability from the use of bicycles,[4] and of liability from victory garden activities, even though the garden is away from the insured residence premises, and of liability from volunteer war work activities.[5]

The best evidence I can give you of the value, in the war effort, of the Comprehensive General Liability form and of the Comprehensive Automobile Liability form is to point out that they are currently being used, along with the Standard Workmen's Compensation and Employers' Liability Policy, as required by the various governmental agencies concerned, in insuring the liability of virtually all of the contractors and manufacturers engaged in war plant construction or in war production.

No effort to talk about insurance and the war can omit a discussion of some of the special problems incident to casualty insurance for contractors with the Federal government.

The problem facing the government in the matter of seeing to it that its contractors are adequately insured is but one very minor

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[4]This may be written by endorsement to the Automobile Liability Policy as well as under a Public Liability, Residence Liability or Personal Liability Policy.

[5]This is included in the "Personal Liability" classifications and is also available under the O. L. & T. classifications.

phase of the truly staggering national problem of procurement for war.

We are apt to think of procurement as a military function but the present conflict between highly industrialized societies has forced us to think of the task of producing materials of war, and of transporting them from factory to front, as the task of the whole nation. Curiously we were at first apt to believe that the task could be done with only a little dislocation of our normal affairs. We were slow to comprehend that preparation for war is a problem of intergrating the *whole* economy of the country, and to a degree that of our Allies, so that we are not working at cross purposes. This, as we are seeing, is forcing the Federal government into an assumption of responsibility over an ever widening area of the economy to see to it that military demands get the right of way over civilian needs. The inevitable dislocations are occurring, with the consequent difficulties of adjusting ourselves to war time necessities.

Perhaps some of you do not know that since 1920 elaborate planning has been undertaken by the government with the objective of developing "—an adequate, coordinated and integrated program of wartime procurement adapted to the American system of government and industry, which will function effectively in case of war."[6] This planning made possible the early development for this war of a substantial amount of centralized control of procurement and has largely avoided a repetition of procurement delays all too prevalent throughout the period of World War I.

This time, at least so far as liability insurance is concerned, a substantial centralization of authority was accomplished very quickly. The War Department promptly established an Insurance Branch within the Fiscal Division of the Services of Supply (now known as the "Contract Insurance Branch, Office of the Fiscal Director, Headquarters, Army Service Forces") and the Bureau of Yards and Docks, of the Navy Department, created an insurance unit within and for the Bureau. Later (5-6-42) a directive of the Under Secretary of the Navy created, for the Navy Departmennt, an Insurance Division within the Office of Procurement and Material.

The normal policy of the services is to operate under a competitive bid system. This has progressively given way to the use of a negotiated contract—either on a lump-sum (fixed price) basis or on a cost-plus-a-fixed-fee basis.

In general contracts for equipment, such as ordnance and ammunition, were placed on a fixed price basis and contracts for construction of camps and plants were on a cost-plus-a-fixed-fee basis. When the fixed price basis is used the cost of insurance which the contractor buys is included within his bid or in the negotiated cost. The cost-plus-a-fixed-fee contractor is reimbursed for the cost of insurance, and for damage not covered by insurance, under the authority of opinions of the Comptroller General.[7]

These circumstances made it necessary for the government to concern itself with the kind and amount of insurance coverage the contractor should have and forced the assumption of the very troublesome responsibility of passing, in effect, upon the reasonableness of the cost of such coverage.

This involved many controversial questions as to rates, dividends, agents commissions etc. and also involved, as a practical matter, some measure of control over the form of insurance contracts to be used. These matters had been regarded by the companies as being subject only to the control of *state* supervisory officials. You will not doubt me when I say that it was not easy for the companies to reconcile themselves to the fact that Washington was exercising a very considerable amount of control over their activities nor was it at all easy for state officials to accept any encroachment upon fields which had been regarded as solely theirs.

The government very early came to the conclusion that, with respect to the projects with which they were concerned, existing classifications and rates were not properly applicable. The risks were unique in that they combined great size, high wages, abnormal amounts of overtime work, unusual safety conditions, and unusual credit standing. Under such circumstances peace time classifications and rates frequently produced excessive insurance costs. This circumstance led, naturally enough, to some consideration of the advisability of not purchasing *any* liability insurance as to cost-plus-fixed-fee contracts. Superficially this might appear to be a logical procedure since in the last analysis the full cost of injuries

[6]Rep. War Department (1938) 27. See also War Department Order, April 21, 1941 assigning such responsibility to the Under Secretary of War.

[7](No. B-12741—October 12, 1940 and No. B-18974—August 16, 1941).

incurred in connection with the performance of the project would fall upon the government. Upon further consideration it will be realized that if insurance were eliminated it would be necessary for the government to establish and maintain, for perhaps a very long time, a large organization to supervise the handling of claims and to establish a large safety organization to perform the services customarily performed by the safety engineering departments of the insurance carriers. These and other considerations led to the abandonment of any idea of eliminating insurance.

Following the decision that insurance was to be purchased the matter of cost became a problem which simply had to be solved.[8] At first a system of competitive bids was employed. It went into effect in January, 1941, but soon developed certain disadvantages and was supplanted a few months later (May 3, 1941) by the present Comprehensive Rating Plan—War Projects Insurance (or as it was at first called "The War Department Comprehensive Insurance Rating Plan") now used by many agencies of the government including, besides the War Department, the Navy Department, the Maritime Commission, the Federal Works Agency and the Defense Plant Corporation.

The Plan is designed to minimize competition between types of carriers. The insurance under it is afforded on what is virtually an "at cost" basis.[9] This is accomplished in part by permitting the contractor to select the carrier with which he desires to deal without requiring that a brokers or agents fee be paid as a part of the rate. Such a fee is separated from the insurance cost as such and the services represented by it are contracted for, as a separate matter between the contractor and the agent or broker, under an "Insurance Advisor's Agreement."

Some of you will detect a certain irony when you call to mind the recent vigorous activities of the Anti-Trust Division of the Department of Justice, in seemingly trying to uphold the competitive ideal which actuated the framers of the Sherman Anti-Trust Act, as manifested by the indictment of members of the Southeastern Underwriters Association and by the investigation pending in the Southern District of New York.

One problem which will occur to you at once is the question of the applicability of state premium tax laws to premiums for insuring cost-plus-fixed-fee contractors with the Federal government. Since the ultimate cost burden falls upon the Federal government, a state tax upon premium is, in a sense at least, a state tax upon an instrumentality of the Federal Government.

It would seem however that in view of the case of Alabama vs. King & Boozer, 62 Sup. Ct. Rep., 314 U. S. 1, (1940) the Supreme Court of the United States would not be inclined to this view, and thus that with respect to such taxes the carriers are probably not within the crumbling walls of governmental immunity. The Alabama case involved a state sales tax on lumber sold by King & Boozer to a cost-plus-a-fixed-fee contractor for use in constructing an army camp. The question was as to whether the Alabama 2 per cent sales tax, which is collected from the seller but which he must collect from the buyer, infringed any constitutional immunity of the United States from state taxation. The Supreme Court of Alabama concluded that the cost-plus-a-fixed-fee contractor was so related to the government in the accomplishment of a governmental purpose that the tax was in effect one which infringed the constitutional immunity.

The Supreme Court of the United States, reversing the Supreme Court of Alabama, noted that Congress had declined to pass on amendment to H.R. 8438 (which became the Act of June 11, 1940, 53 Sta. 265) which would have immunized from state taxation contractors under "cost plus" contracts for the construction of governmental projects and that the essential contention of the government was that the legal incidence of the tax was on it, rather than the contractors, because it was, in effect, the purchaser and the statute makes the "purchaser" liable for the tax to the seller, thus interfering with the constitutional immunity on government purchases.

The court examined the pertinent provisions of the cost plus contract and concluded

[8] It is obvious of course that strict cost supervision is essential if cost plus contracts are to be performed with tolerable economy. The extent to which the government is prepared to go in following this principle is illustrated by the September 29, 1941 ruling of the Comptroller General No. B-20442. 10 U. S. Law Week 2234) to the effect that the cost plus contractor will be reimbursed only when his purchases meet the standards which are created by the various statutes regulating purchases by departments of the government.

[9] The premium formula is: Premium = (fixed charge + modified losses + allocated claim expense) × the tax multiplier. Subject to a maximum of [(90% of standard premium) × the tax multiplier.]

that it contemplated that the contractor would purchase the needed materials in his own name and on his own credit; that the government was not bound by such purchase contracts but was obligated only to *reimburse* the contractors; that the *contractors* were thus the "purchasers" within the taxing statute and were not relieved because they were, in a loose general sense, acting for the government or because the economic burden of the tax shifts to the government by reason of its contract to reimburse the contractor. Such a burden upon the Federal government is regarded as a normal incident of the presence, within the same territory, of two governments each possessing taxing power."[10]

The problem of obtaining proper policy contracts for use in insuring the liability of government contractors was solved with comparative ease, thanks largely to the fact that the forms in current use were so well up to date and to the very fine cooperation between the persons directly concerned.

Generally speaking the liability of such contractors has been insured under Standard Provisions Policies, which have been modified to some extent by general endorsements designed to adapt the contracts to the special needs of the situation. The Comprehensive General Liability Policy and the Comprehensive Automobile Policy are the same forms referred to earlier in this paper and were prepared by the Joint Forms Committee. The general endorsements and other endorsements which have been needed in connection with insurance under the "Comprehensive Rating Plan—War Projects Insurance" were prepared by a committee called the "Joint Drafting Committee of the Joint Rating Committee," consisting of one person representing a mutual insurance company and one representing a stock insurance company. It so happens that the members of this committee are also members of the Joint Forms Committee thus it has been possible to maintain a high degree of consistency, both in substance and form, between the work of the Joint Drafting Committee of the Joint Rating Committee and that of the Joint Forms Committee.

There are many other problems which I would enjoy discussing with you. One of the most interesting is that of the workmen's compensation carriers with respect to war risk hazards within this country. You all know that the Standard Workmen's Compensation and Empoyers' Liability policy does not contain a war risk exclusion and that this situation cannot be changed without changing state workmen's compensation laws. With respect to workmen's compensation insurance covering work on the Island Bases, the government recognized that it was appropriate for it, on behalf of the people as a whole, to relieve the carriers of the extra cost of injuries from war risk hazards as an item apart from the normal cost of insurance on such projects. At first the technique used was to remove such costs (if their inclusion caused the "maximum" to be exceeded) from the rating formula by means of a "War and Transportation Losses Endorsement." This principle was later embodied in Public Law 784 effective December 2, 1942."[11] Senate Bill 450 (The "Pepper Bill") which at the time of writing is pending before the present Congress, among other things, provides for the reimbursement of insurance carriers obliged to pay compensation benefits to those injured in this country by reason of a war risk hazard, also reflects the theory that the cost of at work injuries from war risk hazards should be borne by the whole nation rather than by the carriers or, if such injuries are non-compensable, by the individuals so unfortunate as to sustain them. Whether, assuming the non-enactment of the Pepper Bill, the problem will be met by reinsurance, purchased perhaps through some agency of the government, by a voluntary pooling of losses, or simply by relying upon presently existing facilities in the hope that no serious bombings will occur, remains for future determination.

There is much which might be said about war risk exclusions in the various policy forms and what action has been taken to fill the coverage gaps created thereby. The story of the War Damage Corporation is a fascinating one and should include a discussion of the "Glass Reinsurance Agreement" and the "Money and Securities Policy" as well as the "War Damage Policy."

I believe, however, that I have said enough to show you that the insurance industry has eagerly accepted its wartime role. Not, I must confess, without moments of fear that federal control was dangerously close to being a fact but with confidence that its traditional free-

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[10]Graves vs. People of State of New York, 59 S. Ct. Rep. 595, 306 U. S. 466 (1939).

[11]See "Public Law 784." Insurance Counsel Journal, April, 1943, p. 48.

dom of action was not being destroyed but merely temporarily subordinated to the national need.

Our great industry, along with each one of us, has a keen realization that an extraordinary amount of governmental regulation is funadmentally necessary if our economy is to function with a degree of unity sufficient to enable us to overwhelm our enemies with the sheer weight of our armor. We are, naturally, not escaping the pains which all democratic institutions experience when old ways must give way to those more akin to other forms of government, but we take pride in our ability to adapt ourselves to the needs of our nation at war and pledge that we shall be no less willing and able to devote our resources and skills to the service of our nation in the enduring peace which victory must bring.

The Road To Peace

By James S. Kemper

Former President, Chamber of Commerce of the United States and President of Lumbermens Mutual Casualty Company

Chicago, Illinois

A YEAR AGO is was my privilege to speak to the lawyers of Tennessee. My studies prior to that occasion vividly brought home to me that except for the lawyers of this country there might have been no Constitutional Convention in Philadelphia in 1787. In the deliberations of that Convention, it again was the lawyers who held the laboring oar. Out of their learning and their statesmanship they gave us a plan of government that has been as significant a factor in the greatness of America as the boundless resources of a virgin continent.

Your profession did more than that. Through Marshall, Story and a score of other great judges, it took the paper plan of the Constitution and made it a living instrument of effective government.

Three million people occupied a fringe of the Atlantic seaboard when the Constitution was adopted. 96 per cent of that number were engaged in agriculture or activities incidental to agriculture. That a charter of government framed for so simple an environment should have proven adequate for the vast and complex society of our own time is not merely one of the great stories of the world. It ranks among the truly great things any people ever has done. It easily is our country's outstanding achievement.

Today, as we gather here, the prayer that is on the lips and in the heart of every true American is for an early and successful conclusion of this war. With it is the prayer that our sons never again will be sent to fight on foreign shores. The sacrifices we are making in this struggle are stupendous. They involve not only the precious blood of our youth, but the mortgaging of all the savings of our people accumulated from the early days of the Republic by thrift, by hard work and by intelligent use of our opportunities.

Each of us desires permanent peace. The question is: Can permanent peace be achieved; if so, how? If not, how can that desirable objective most nearly be accomplished?

I think that I shall find no dissent here from my firm conviction that the prime essential in any consideration of this subject is realism. It is easy enough for demagogues glibly to announce that the answer is — a super-government, a world federation of nations, which in addition to assuring peace would provide the comforts and luxuries of life to every human being on this globe. But, the actual accomplishment of that end is another matter and, like much of the eery persiflage that is abroad in the land, leaves out of consideration many of the practical aspects of the situation.

The Master said: "Go ye forth into all the world and preach the Gospel to every creature." The acceptance of Christ's philosophy by all the peoples of the world and by all the governments of those peoples, and the actual practice of the tenets of the Christian religion by individuals and by nations undoubtedly would provide the best basis and the best hope for permanent peace. And yet, history demonstrates to what a trivial extent mankind has put these principles into effect. Realism compels the admission that the massive fact of human nature stands in the way. And the cold statistics as developed by the Society of International Law show that during the last 4,000 years there has been but

268 years of peace despite more than 8,000 peace treaties.

Reluctantly, then, I am forced to the conclusion that while we got a Constitution for our nation and with it comparative peace within our borders, we are not going to get its modern equivalent for the world and, hence, it will not be easy to get permanent peace.

If you will bear with me for a moment, I shall endeavor to outline by what reasoning I reach this conclusion. Then, for whatever it may be worth, I shall give you my opinion with respect to the situation in which our country will find itself upon the conclusion of the present war.

I had a definite purpose in refreshing your recollection on the contribution of your profession to the Constitution and the equally decisive contribution which the Constitution, itself, made to American welfare. That purpose was to provide the basis for the statement I now wish to make to you, which is that law is the road to peace. The case is even stronger than that. Law is the *only* road to peace.

Let us, first, consider why law is the only road to peace. It is an interesting thing that one of the best appraisals of what peace is, and how to get it, dated back to the 18th century. Oddly enough, it was Emanuel Kant, a German and a Prussian at that, who gave us this key to world peace. His great study is entitled "Perpetual Peace" and first was published in 1795. His appraisal should be supplemented by Burke's famous speech on Conciliation with the American colonies and by the first ten of the Federalist papers written by Hamilton and Jay to persuade the American people to approve our Constitution.

This material argues that human nature being what it is "nations in general will make war whenever they have a prospect of getting anything by it." Neighboring nations by their mere proximity have interests that are certain to conflict, and that conflict may result in war. History shows that sooner or later war frequently results unless both territories are brought under the control of law by union under one government, or are compelled to arbitrate their differences by another power or powers sufficiently interested and sufficiently strong to intervene.

Territories as vast as the Roman Empire and our own United States have achieved peace by putting one government over all the territory and making its will supreme by means of law. Law is only rule, and it must be made effective through force. No one appreciates better than you lawyers that the real issue settled by our war between the States was that local sovereignty had to give way. Then the laws enacted by the Union became in deed and in truth the law of the land. Slavery was only the occasion of the War, not its real cause. Since the Union had the power to impose its will on the South, local sovereignty was defeated. Ever since we have experienced the blessings of peace through law in a territory larger than Europe.

The only real peace ever known by the hundred warring nations that eventually were brought into the Roman Empire was experienced by them only after Roman law was made effective from the English Channel to the Persian Gulf by the Roman sword. Law, that is to say, rule plus force, gave Europe under Roman rule, the longest period of peace it ever has known.

Edmund Burke, endowed perhaps with the ablest mind that ever addressed itself to the problems of government, came to the same conclusion. He points out that England, Wales and Scotland knew nothing but incessant conflict until their wars were ended by uniting all their territories under one government which had the force to sustain the law. Let me sum it all up in one sentence: The best that has been thought and written on the subject as well as the total sum of human experience makes it as certain as a sum in arithmetic that the road to permanent peace is as clear as it is that we are here today. *One government with one law and one force to support that law alone will bring permanent peace.* The "One World" recently publicized is one world only in a superficial geographical sense. By no means is it "One World" in the sense that it is either ready for or capable of achieving one government.

So despite the prophecies and the plans with which the air is filled neither Utopia nor anything remotely like it will be our lot when the war is over. I am convinced that it just isn't in the cards for men, at this stage of human experience, voluntarily to yield their local sovereignties and submit to any appreciable measure of world government. Russia and China have been devastated beyond recognition and millions of their people killed and enslaved. Is it realistic to suppose that their own military force which alone has enabled them to survive will be dispersed at the close of this war, or a sufficient amount

of it placed under the command of any super world government? They won't do it and neither will England or America.

All thinking on this subject must come back to this central fact: The post-war world for generations to come still will be a world of sovereign states. There may be so called world courts, there may be a new League of Nations and there may be, as Mr. Churchill has proposed, a Council of Europe and a Council of Asia. Apropos of Churchill's suggestion, it perhaps is appropriate to point out that we in the Western Hemisphere have had for years the equivalent of a Council of the Americas. By common consent and mutual interest through sane inter-American policies we have found the reality of international collaboration. In passing I should like to pay tribute to Senor Jose Brunet of Montevideo and the other business men of South America whose vision and industry made possible the creation of the Permanent Council of American Associations of Commerce and Production. That great organization, the voice of business in 21 American Republics and the Dominion of Canada, now can speak and speak with authority and influence for peace, prosperity, friendly relations and freedom of opportunity in this great hemisphere. But until Europe and Asia too can approach what we of this hemisphere have achieved it must be recognized that behind all the imposing facade of world organizations, leagues, courts and councils the controlling fact for generations will be that all real sovereign power and 98 per cent of all military force will reside in a small group of powerful states. They will be independent states and subject to no law but their own will.

What does all this add up to as respects America? As I see it, we must either get down to business and formulate a foreign policy that will reduce the frequency of world war or we must suffer the utter ruin that surely will be ours if we continue to fight a world war every twenty years. Perpetual peace is an idle dream that will not be realized. A world war every twenty years is nothing less than national suicide. Between those two extremes, mankind, and especially America, must find a middle way that will enable it to live.

What then must we do? As I suggested a moment ago we must think out and develop a foreign policy. A foreign policy determines what a nation's vital interests really are—the things deemed essential to its security and for which, if need be, it is intelligent to wage war. It surveys the obligations a nation has outside its borders. It determines the dangers from abroad that may imperil its security. A foreign policy attempts to figure out possible enemies and how and when they may attack. Then comes its most vital job. Foreign policy must equip a nation with military power and strategic positions of attack and defense in relation to its potential needs.

A wise foreign policy has two purposes. It would make wars so infrequent that a nation could live and it would make certain of victory in the event the nation was compelled to make war. Three times in the last 45 years the logic of events has compelled us to pay the frightful price of war to preserve our national interests. If we had had a real foreign policy it was in our power to have suffered no loss of vital interest and at the same time we probably could have kept out of war.

For half a century this country had had no real foreign policy. Both political parties have been at fault and greatly at fault. During all this time America has had great interests and great commitments all over the world. She has had neither a workable plan to forestall war nor any ready means to wage war effectively when we got into it. Outside of this hemisphere our policy, if you can call it that, has been one of aimless drift, except to such extent as we were influenced by the foreign policies of other nations which desired our help in achieving their objectives.

We did not know where we were going and judging from Pearl Harbor we didn't know very much about where anybody else was going. What a sad commentary it is on both political parties that we should have been in the Philippines for half a century and then have subjected General MacArthur and his brave band to the tragedy of a hopeless resistance.

Think of it, Gentlemen: America, the greatest Republic and the most wealthy nation in the world planted itself in the Philippines right on the doorstep of the great Asiatic Empires; yet we had no better plans about what we wanted there and how to protect ourselves through diplomatic or military means than if we had been a tribe of Sioux Indians.

As a matter of fact, we did two things which even a Secretary of State for the Sioux Indians wouldn't do. After World War One we agreed to Japan's occupation and later fortification of a chain of islands between the Philippines and Pearl Harbor. Those islands

prevented us from getting help to MacArthur after we were attacked by Japan. In short, we agreed to the very things that compelled General Wainwright to surrender at Corregidor. The Democrats were in power then but the Republican record which followed was almost as bad. As a matter of fact, the Republican Party at the Washington Disarmament Conference in 1921 sunk more American battleships than the Japanese did at Pearl Harbor. Today we are paying for the lack of a foreign policy adequate to our needs. Today our young men are paying for this folly with their lives. And a hundred years from today the debt created by this war—unless repudiated—still will be a burden on every pay envelope in the country.

A leading international economist argues that the future of the world will be determined in large measure by the amount of "plunder" which each victorious nation acquires. We in America engaged in the last World War to "save the world for democracy." In this war, our battle cry is—"Destruction to dictators, to aggressors and to totalitarian governments." Other nations have fought to keep what they have or to get what some other nation has. We of America have asked and have received little, even of appreciation, for our contribution to the last war or to this one.

I raise with you the question as to whether we should not immediately announce to the world certain definite objectives which we have. Certainly, we made a mistake after the last war not to have acquired islands in the Pacific. Let us not make the same mistake again. Senator Reynolds, Chairman of the Senate Foreign Relations Committee within the past two weeks has proposed a definite program for the acquisition of territory in adjacent waters, both in the Atlantic and the Pacific. And Senator Lodge suggests that we should consider acquiring new territory after the war in order to offset the depletion of some of our vital mineral resources which the war has caused.

Stalin apparently has made it clear to everyone that the Four Freedoms and the Atlantic Charter notwithstanding he plans to keep a good chunk of Poland; destroy the Republics of Lithuania, Latvia and Estonia; help himself to a piece of Finland; and take a couple of good slices from Rumania and perhaps Bulgaria.

Please do not misunderstand me. I am not recommending an international grab bag. I only point out these things to you to emphasize that in a realistic world we, too, must be realistic if we are to protect and preserve this great Republic. Heaven knows that the opportunity to live under the Stars and Stripes would be embraced by most of the peoples of most of the lands in the world, who, individually, since the founding of our nation have come to our shores and here found peace and happiness and prosperity.

In conclusion I should like to leave with you this thought. When victory is ours a new chapter in our national life will get under way. A strong independent America willing to cooperate with other nations of like mind, large and small, can do much to make this a better world in which to live. In my judgment a realistic plan immediately programmed for the protection of America's future, plus an intelligent American policy, would do more to give the world a hundred years of peace than all the so-called peace plans that will be hatched between now and doomsday. To be sure, the world will be a chaotic place for some time after the war is over. But America still will hold the best cards in the deck. She will be the most powerful nation in the world. If in the management of her relations with the rest of the world she can create a wisdom that will match her strength, she can build an American Century and it will be a Century of Peace.

The Plaintiff's Lawyer's View of Insurance Companies And Their Counsel

By Guy Crump
Los Angeles, Calif.

WHY the present speaker was selected to address this distinguished body of specialists as a representative of the plaintiff's lawyer raises a question of passing interest, at least to the speaker.

That there exists a large, individually vocal, but collectively unorganized and impotent group of trial lawyers who, more or less aptly, may be classified as plaintiffs' lawyers may be conceded.

This group includes many outstanding, able and entirely ethical members of the legal profession, but there are certain implications, attached to some of those who consisently represent plaintiffs in this type of case, which suggest a slight and not altogether pleasant aroma. The aura is, at times, slightly tainted.

May I, therefore, at the inception of these brief and disjointed remarks, interpose a plea of avoidance, without the concomitant confession. It may be that something over thirty-five years of almost constant trial work should qualify your invitee to appear before you in the role of an attorney, and as something more than half of the labors of those years have been devoted to protecting the pure and innocent among litigants, who, as you know, are always the plaintiffs, it may even be that the speaker may be said to typify "the plaintiff's lawyer." But as only a small fraction of a modest practice has been devoted to the trial of personal injury cases (none, if it can be avoided, where there is not adequate insurance coverage); and as I have not carried a professional card for the last twenty years, and have never been known to do better than "place" in any contest of speed with a public vehicle, I trust that I may escape measurably unscathed from this citadel and armory of those dragons among defendants, those monsters among litigants, the insurance companies of America. Their diabolical schemes for defeating justice, as is well known to plaintiffs' lawyers are brewed in the witches' cauldrons which you here attend.

Here endeth the preamble.

Having thus in a few well chosen words, ingratiated myself with my audience, I proceed with the body of my address.

After mature deliberation, I have concluded that the subject logically divides itself into two parts, to-wit: (A) Insurance Companies; (B) Their counsel. Subdivision (A) in turn is with equal logic divisible into (1) "Insurance" and (2) "Insurance Companies." This order will be followed, unless I decide otherwise.

INSURANCE

This branch of the subject calls for extended discussion. Those present do not. But your President told me not to pull my punches and imposed no time limit. So, as this is the first, and probably the last opportunity which I shall have to appear before you—here goes.

The law of insurance, as you will be pleased to learn, is comprehensive.

It is generally said to be "a branch and special application of the law of contracts."

This is my major premise. If you accept it, you will observe, as the theme develops, how beautifully and irresistably the reasoning leads to a conclusion.

"Such contracts are frequently regarded as a virtual necessity, and their various kinds and forms serve to protect against loss, liability, and disability, and to protect one's survivors. Certain types of life insurance policies have investment features." (This is quoted and aptly expresses my minor premise).

"The widespread use of such contracts, therefore, and the limitless variety of provisions employed therein, explain the great amount of litigation within this field of law." (This is also quoted and states my first conclusion. My final conclusion comes later.)

You will at once perceive how impeachable is the logic, which without a false note or *post hoc* has brought us to the point in which we are most interested. To-wit: "the great amount of litigation in this field of law."

I shall return to this point shortly, but before doing so, wish to retrace my steps to consider further my major premise, and in so doing, raise a legal question which has never received adequate treatment by those learned in this branch of law. However, this backward look requires another approach to the subject. We must now consider the history or development of insurance law.

According to Pardessus (whom I never heard of before), the first form of insurance

contract had to do with marine insurance, which reminds me of a federal judge who was called upon to preside over his first admiralty case, having never before seen a body of water larger than a mill pond.

On second thought, I don't think I should tell the story about the federal judge.

So, getting back on the main track, the first known insurance contract, as such, dates back to the 10th century, presumably A. D.

Nothing more of any importance happened with respect to insurance law until August, 1896, when the American Bar Association held its nineteenth annual meeting at its birthplace, at or near the race track, at Saratoga Springs, New York.

As the deliberations of that august body, (no pun intended), had profound effect upon the whole future of insurance, and displayed an enlightened, not to say forward-looking recognition of the importance of insurance law as deserving of consideration by the American lawyers' House of Lords, it may not be altogether amiss if the proceedings of that meeting are quoted at some length.

It appears that Mr. William Wirt Howe, of Louisiana, presented a proposal to amend the By-Laws so as to provide for the establishment of a section on the subject of the law of insurance, which, being reported to the Association by the Executive Committee, elicited an extended discussion which I will summarize. Mr. Howe stated that his resolution was drafted at the request of a number of members of the Association because it was thought that the subject of insurance was becoming important. He somewhat deferentially suggested that there would be no harm in trying the experiment of organizing a Section of Insurance, and defined the validity of the objection which he said existed in the minds of some of the more conservative members "to the establishment of sections of this kind, upon the ground that it might disintegrate the Association itself."

Mr. Harvey B. Hurd, of Illinois, was recognized and delivered himself as follows:

"I do not propose to argue the question, Mr. President, but I simply rise to say that I am opposed to the creation of the Section. If more Sections are created, I hope they will be of a more general nature and not take up a specific branch of the law."

Next, Mr. Smith, of Georgia, opined that if any change at all were to be made "it would be better to abolish the Section on Patent Law rather than to add another section on insurance." "If we establish this section," he said, "the next step will be to organize a section on corporations, and so the Association will be subdivided into sections on different departments of practice." He also opposed dividing the Association "into a number of small and useless bodies."

Thereupon, Mr. John A. Finch, of Indiana, spoke at some length, concluding his remarks with the suggestion that, if the proposed Section on Insurance Law did not prove to be profitable, it could be dropped.

Mr. Henry Budd, of Pennsylvania, did not agree at all with Mr. Finch, although he thought "that the Association should at some time in the future consider the question of insurance." He didn't think, however, that a new section should be created because, he said, "a section once created is permanent. True, it may be abolished, but it is permanent in the sense that anything created by law is permanent until the law-making body sees fit to reverse its previous action." He thought however, that insurance law was a sufficiently important part of the law of contracts so that some attention should be given to it, preferably by a special commitee, because the subject was not of sufficient generality to justify the creation of a section which, once created, will be very hard to get rid of.

An eloquent plea was made by Mr. Robert Sewell, of New York, who informed the meeting that "most of the business of insurance companies * * * radiates from the center of our metropolitan city," that "the moment a new state is created, the companies are pounced upon by the predatory instincts of politics," and that the addition of a new section would not disintegrate the Association.

Mr. McCrary, of Iowa, arose to advise the President that the preceding speaker had confused a section with a standing committee, whereas he, Mr. McCrary, had a standing committee that was famishing for want of pertinent business; namely, the Committee on Jurisprudence and Law Reform for which reason, he was opposed to the creation of another section, "not but what I believe the matters that have been mentioned here should be considered—I myself have felt very strongly the need of something to change the laws relative to insurance." But he believed the subject could come before the Association better through the reports of his committee on Jurisprudence and Law Reform.

Now gentlemen, we come to one of the greatest efforts of the then age. Mr. McCrary having finished his remarks, Mr. James

C. Carter, of New York, whom I have been brought up to consider one of the greatest lawyers of the country, delivered himself as follows:

"Mr. President: If I may be indulged a moment, I should like to say that for my own part I really feel hardly prepared to cast a vote. I feel that I do not sufficiently understand whether the project would be, on the whole, for the benefit of the Association, or otherwise. I recognize the many advantages which may proceed from the establishment of sections. I recognize also the especial claim which the subject of insurance has to the establishment of such a section, if we are to have one. But underlying all that is the general question whether, on the whole, it is wise to extend this practice of establishing sections. I do not know whether it is or not. I can see that while there are many reasons which favor it there are many also which may tend the other way." Mr. Carter thereupon "ventured" to move that the subject be referred to a committee. Mr. Sewell, of New York, seconded the motion of Mr. Carter, of New York. Whereupon, Mr. James B. Thayer, of Massachusetts, added to the already over-burdened thought on the subject by advising those present that the same difficulty occurred to him as had occurred to Mr. Carter.

Mr. Hitchcock, of Missouri, "put the frosting on the cake" in some extended remarks, in the course of which he said that he was not quite clear that the question was one upon which a committee could act intelligently; that the proposition to establish the proposed section it seemed to him, amounted simply to this: "If there be gentlemen who desire to occupy a certain amount of time in discussing among themselves a particular subject, and the Association deems that subject of sufficient importance to authorize those of its members who desire to discuss it among themselves as a separate section, to do so, that the Association as a general body should authorize such an organization." He added, with irrefutable logic, that if there should not be enough members who desired to constitute such a section, the section would not be constituted.

The debate was brought to a close by Mr. George M. Forster, of Washington, whose thoughts were so cogently expressed that I cannot refrain from quoting them verbatim:

"Mr. President: I am opposed to referring this matter. I am in favor of killing it here and now. If it is desirable to make this Association a vehicle for the big insurance companies, through their general attorneys, to come here and formulate legislation which shall receive the sanction of this body, why then the Section would be a good thing. But I certainly am not in favor of carving any more out of this general body or there will not be anything left of it."

The question was put on the reference of the resolution to a committee. The motion was lost and the question recurred on the original motion.

Whereupon, the President, with the help of Mr. J. W. Douglass, of the District of Columbia, "blew out the candle on the frosting on the cake," as follows:

"Mr. President: Would not this be a legitimate subject of investigation and report for the consideration of the Committee of Uniform State Laws?"

The President: "I do not know, sir, why it would not be."

The resolution was put on a rising vote and not carried.

The American Bar Association was born in 1878. In 1896 it was still adolescent. But in 1904 it was in the full flower of its newly acquired maturity, and, it may be, that its thoughts were then directed rather to the "sere and yellow leaf" of its anticipated senility than backwards towards the days of its childhood. Be this as it may, in the year of our Lord 1904 the American Bar Association made a tremendous stride in the development of insurance law by the appointment of a standing committee on the subject. The embryo stirred.

The section was finally born in 1933. A period of gestation which is the longest on record.

Having thus brought the history of the law of insurance to the dawn of the millennium of legal acumen now in full effulgence, I return to the question which awaits solution. It is:

No.

Regretable as it may be, I cannot bring myself to state the question without considering point A(2).

INSURANCE COMPANIES

This horse is short and soon curried. It seems to me there is no excuse for the existence of any insurance body, group, association, or what have you, in any state, which can only be sued at its own election. This is figure 1. Figure 2 is indigenous. According to the reported cases there are a few, but in justice it should be said very few, insur-

ance companies, which, on the record have appropriated to themselves the philosophy of a certain California pioneer. "Don't pay until judgment is obtained against you."

This strikes me as bad policy—although unobjectionable from the standpoint of the plaintiff's lawyer since it adds, most generously, to "the great amount of litigation within this field of law."

As a private citizen, however, and hence, theoretically a member of the body politic, and as such, entitled to the protection of personal, if not property rights, I would be inclined to change my insurance carrier if I knew that it was notoriously litigious.

There are only two classes of insurance companies from the viewpoint of the plaintiff's lawyer.

1. Good.
2. Bad.

All solvent companies, particularly those which are reasonably generous in their settlements, are good. All others are bad.

COUNSEL

Insurance counsel are not any different from other lawyers, only more so. They are of all kinds, degrees and conditions of servitude.

Take for instance the tactician whose stock in trade is delay, in the hope that plaintiff or defendant may die or witnesses disappear. I realize, of course, that defendant's death avails only in states where an action for negligence does not survive, but it seems to me that there is no excuse for the further existence of this legal anachronism, especially in cases of willful or wanton misconduct. This heritage from a non-mechanical and non-insurance age should itself become a casualty, without benefit of clergy. It results in grave injustice and frequently in disaster to those whose misfortune it is to be in the right place at the wrong time.

To illustrate: Let us assume that a man without heirs and worth millions, being of sound mind, but wholly indifferent to the lives and persons of those who may get in his way, as well as to his own, decides to commit suicide by driving his automobile off the end of Market Street into San Francisco Bay. He drives at 100 miles an hour, through safety zones for blocks, knocking people right and left, killing several and permanently crippling many more. He accomplishes his purpose, yet none of those injured can recover anything from his estate, or if insured, from his insurance carrier. Why this condition of the law is still tolerated in a country which boasts of its social security legislation is beyond my ken.

Then there is the insurance counsel whose invariable practice it is to interpose a dilatory plea, motion to strike, motion to make more certain, or demurrer—presumably at so much per.

Again we find the counsel who is dominated by the claims department, with the result that he settles many cases which ought not be settled, and does not settle where settlement should be made, pays too much in many instances and too little in others. This type lacks balance and proper assertiveness.

Another type rarely wins a case but depends upon his ability to reduce the amount of the recovery.

Occasionally, we find the "don't-give-a-damn" lawyer, who gets mad about something and becomes—temporarily—an expensive luxury for his company.

There are laughing lawyers who laugh cases out of court. There are weeping lawyers who impose on the sympathy of the jury.

But I have yet to see an attorney for an insurance company who didn't retain some measure of self-respect. Without exception, they object to the jury being told that they have sunk so low as to represent an insurance company in the case on trial.

Finally, there is the technical counsel, who bases his defense on some obscure word or phrase in the fine print of the contract which no one else has ever read, except the draftsman; who can tell from a single glance at the record whether a host driver has been guilty of "willful," as distinguished from "wanton" misconduct, or of only "gross negligence" as opposed to either "willful" or "wanton" misconduct; who knows by heart the statute of limitations of every state, and as between conflicting jurisdictions which offers the most favorable substantive and which the most favorable adjective laws. This man is no mere tactician but a strategist—a general officer. He thinks too much and is dangerous.

Which reminds me of an Italian who once called on the district attorney in Los Angeles. "Mister Ford," he said: "There have been three of my countrymen killed by the black hand in Boyle Heights in the last six months. Mr. Ford, it is not right. There ought to be a law against it."

Generally speaking, however, it should in justice be said, that insurance counsel are not wholly bad. There are good, virtuous, kindly souls among them. Lots of them. But where

in Hell are they, as the man said with respect to mothers-in-law. This, needless to say, is but the expression of the views of the plaintiff's lawyer, and is strictly limited to his views while engaged in his commendable practice of trying to get all he can by what means are at hand for his hapless client, and, incidentally—though this is only a minor consideration—for himself.

Socially, and while they are engaged otherwise than in defeating the claims of plaintiffs which are always just and never exorbitant, insurance counsel are rather likeable people. I have observed that they are not only tolerated by plaintiff's lawyers but are even treated as equals. This is greatly to the credit of plaintiff's lawyers, who, after all are broadminded and never up-stage.

I have now arrived at my final conclusion, being firmly convinced that what has been said has been highly conducive to the establishment on a firm foundation of an enduring amity and *entente cordiale* between plaintiff's lawyers and insurance companies and their counsel.

Though we strive manfully against each other, yet may we march forward, arm in arm, pausing now and then to do homage to that noble institution, "The Goose that lays the Golden Egg."

Marine Insurance—An Essential Industry For a Maritime Nation

By Henry H. Reed
General Manager, New York Office
Insurance Company of North America
New York City

MARINE insurance is known to be the oldest form of insurance. Its origin was the result of the dangers inherent in foreign trade, the risks of which were too great for any one merchant to assume.

The earliest appearance historically was in Babylonia, records of whose trade across the Persian Gulf and her great land traffic over Arabia have been deciphered.

Marine insurance originally took the form of Bottomry or Respondentia contracts. These were loans on hulls and cargoes at very high rates of interest, the repayment of which depended on the successful completion of the venture.

The course and development of this protection followed the rise of maritime nations. The merchants of Ancient India, Phoenicia, Greece and Rome needed it. References to it may be found in their codes of commercial law, their rulers recognizing its necessity to foreign trade. In Rome, contracts of Bottomry and Respondentia gradually changed to a form more nearly like that of modern marine insurance.

During the Middle Ages, foreign trade was reborn. Its beginning was in Italy. The risks were many and serious. Marine insurance quickly followed as a necessity and the independent contractor or underwriter made his first appearance.

Marine insurance followed inevitably the course of foreign trade, progressing and growing as the trade developed through the Continent, Scandinavia to England where the greatest trading nation in the world developed the greatest insurance market in the world. Today the English market is still the greatest in the world.

The part played by the law and by the lawyers in the development of marine insurance has never been properly recognized. Probably the most ancient laws which are still in use without substantial change are those relating to General Average, which is itself a primitive form of marine insurance. From the beginning, rulers saw the importance of foreign trade and were intelligent enough to realize that it should be encouraged. Their approach was not to regulate the operation of business but to define the rules of the game. Merchants and their insurers knew clearly what their rights and their obligations were and governed themselves accordingly.

The ancient law of the sea was known to the Italians of the Middle Ages and its form was generally followed by other maritime countries. Perhaps the development of this medieval law into modern times is best illustrated by the British Marine Insurance Act of 1906.

It is very interesting to note that these commercial codes of medieval and modern Europe were not laws imposed on commerce but rather the codification of mercantile cus-

tom in accordance with the technical development of legal principle.

This historical preface is largely drawn from the "Brief in Behalf of Ocean and Inland Marine Underwriters" prepared in 1932 by Mr. Archibald G. Thacher of New York. I can heartily recommend the reading of this brief for all students and others interested in marine insurance or the law relating to marine insurance.

If in olden times marine insurance proved a necessity to maritime nations how amply this has been demonstrated in modern times in the case of the British Empire. As the Empire rose during the Eighteenth Century, so marine insurance followed. The great institution of Lloyds of London began in the late Seventeenth Century. Its value to British commerce has been incalculable. The corporate development was retarded by the granting in 1720 of a monopoly of this class of insurance to two companies—The London Assurance Company and the Royal Exchange Assurance Company. This monopoly lasted for a hundred years until it was dissolved by Parliament. Then the Company market multiplied rapidly.

Banking, shipping, insurance form the tripod on which British commerce rests. The strength of their insurance position is best shown by the fact that in spite of the overrunning of so many premium producing countries and the threat of invasion the properly insurance (i.e. marine, fire and casualty) premiums during 1941 actually shows a substantial increase over 1938 the last full year of peace.

Remember that this development was achieved with freedom from government regulation. Insurance companies in England have only that degree of supervision which any other business is subject to. Their financial soundness is regarded but they possess complete freedom to insure at rates and forms of their own devising. A healthy international competition has given the purchasers of marine insurance the broadest forms and the lowest rates.

In the United States marine insurance began with the assumption of risks by individuals. A merchant would place insurance with other merchants. As business grew this method proved inadequate. In 1792 the Insurance Company of North America was founded with a capital of $600,000, to engage in the writing of marine insurance. Many other companies were formed and soon every important port on the Atlantic had its quota of companies.

We forget that until the 1820's the commercial eyes of America were turned to the East. The development of the West and the building of American industry has overshadowed the tremendous part that foreign trade has played in building this country. Foreign trade brought the capital to build our textile mills. Eastern money originally earned in overseas trade financed our railroads and our factories. In addition enormous sums were loaned and invested here by Europeans, principally the British and the Dutch. These loans were repaid by American exports. A favorable trade balance has been a necessity in order for us to pay for services and for money we borrowed.

The first half of the last Century brought American foreign trade and shipping to its zenith culminating in the brief and romantic clipper ship era. Insurance followed along. Most of our ships and cargoes were insured in American Companies, usually local companies at the seaports. Marine business thrived during this period; as an example, in addition to many Stock Companies there were as many as 42 Mutual Marine Insurance Companies actively engaged in New York City; but one remains.

Following the Civil War and the arrival of the Age of Steam, the American Merchant Marine was gradually driven from the sea Our commercial minds turned to the West. It was impossible to compete with foreign steamships. Our costs were higher and our interest was elsewhere. Why should a man follow the sea when there was a shortage of labor at home?

At the outbreak of World War I the amount of American overseas tonnage was trifling. This along with our coastwise ships was largely insured in London. Marine insurance companies had been starved by lack of premiums. The market was small and subsisted in the cargo business and local small hulls.

British companies had been freely coming into the country to write all varieties of insurance excepting life. They were welcomed and became an integral part of the insurance community. They made large deposits, largely employed American staffs and generally contributed to the building up of the American insurance market, including ocean marine. They paid their taxes and assumed an important and equal part with the native companies. It is important to remember this

in any future consideration of Anglo-American competition.

World War I not only stimulated foreign trade but caused the building of a large American Merchant Marine. In addition, the development of the oil business necessitated a large tanker fleet. To serve this important and growing industry the American Marine Insurance Syndicates were formed in 1920 at the behest of Congress. They grew and at the outbreak of World War II these Syndicates were writing between forty and fifty per cent of American ocean going hulls.

The first World War created a substantial increase in the American market. Many American companies which had previously confined their writing to Fire and Allied lines entered the Marine business. Following the traditional rule, trade and shipping asked for and received the service of insurance as they increased and demanded more capable and adequate protection.

Lack of a comprehensive policy then resulted in the deterioration of the American fleet. Most of our ships were aging and new cargo ships were built. Many ships were laid up because we could not compete with foreign ships built at a much lower cost and manned by crews at a much lower wage scale. Our trade was still large but the ships were getting old. In 1937 most of our fleet was 17 or 18 years old. If we accept 20-25 years as the normal life of a ship our fleet had some seven years of life expectancy.

The situation was met in 1937 by Congress and the Administration by creating the United States Maritime Commission. Ships were designed, built and sold to operators on a basis whereby the government assumed the difference in cost between American and foreign ship builders. Many owners were given subsidies representing the difference between American and foreign operating costs. The American Merchant Marine was on its way back.

The plans for a peaceful effort to have the increase in our fleet and our foreign trade followed by their faithful servant marine insurance, were interrupted as all life was interrupted by war.

The following is a brief account of the workings of war risk insurance in America. This divides itself into two parts: 1—War risk insurance on hulls; 2—War risk insurance on cargo.

The American Marine Insurance Syndicates have written the greater part of war risk insurance on hulls placed here from the outbreak of the war until the assumption of these risks by the War Shipping Administration. Until Pearl Harbor it was profitable although the premiums were not large. Many owners in trades remote from the European theatre did not carry this insurance. The competitive British market wrote a substantial percentage, especially on the lower valued ships.

One month after Pearl Harbor the submarines struck. The War Shipping Administration was not legally prepared to properly assume the risk. They were operating under a statute drawn in the early days of the war in Europe when the sentiment in this country was non-interventionist. The Syndicates were offered and accepted practically the entire risk of the American Merchant Marine. The underwriters not only did not anticipate the force of the submarine attack but overestimated the ability of our Navy to counter the blow. As we all know now, the sinkings in the Western Atlantic were serious indeed. In March and April, 1942, underwriters suffered many total losses. While these losses were serious in themselves they were not enough to affect in any material degree the over-all position of the companies.

During this same period (March and April, 1942) Congress passed the necessary amendments to the law to permit the War Shipping Administration to undertake these risks. Although underwriters quoted for the risks as they expired, the government quoted cheaper rates and finally assumed the entire risk on American ships. Certainly underwriters can in no way criticise the government for this necessary and wise action. The fact remains that events prevented them from continuing in the business on a profitable basis. They could have continued on an experience rate basis but this was deemed impractical. They can feel, however, that they have made a valuable and expensive contribution to the war.

Underwriters have every right to be proud of their record in the writing of war risk on cargo.

Early in 1939 war was in the air. Many thought it might be averted but all agreed that preparation was necessary. The American Cargo War Risk Insurance Exchange was formed and put in operation in June, 1939. Rates were nominal, but the organization was ready to meet the shock of war.

In September, 1939, the Exchange was

prepared and functioning. Rates of course went up but the imports and exports of the United States were protected. The Exchange has offered practically unlimited coverage at standard rates to our merchants and manufacturers.

Until Pearl Harbor the business was profitable and underwriters were able to build up a reasonable reserve. This helped meet the impact of the Axis attack against American shipping during the first six months of 1942. Losses were many and large. Rates advanced and advanced as the sinkings were reported, reaching their high point in August.

The government has offered its facilities to private shippers at rates on the average somewhat below the commercial market. In addition the demands of price control urged upon them the necessity of charging nominal rates on certain commodities essential to the economic life of the country. Thus imports are largely insured with the War Shipping Administration or (in the case of some shipments for government account) war risk insurance is not carried.

The last six months of 1942 showed an improvement in the account and the entire year showed a loss considerably less than anticipated. The Exchange had met the situation, furnished the coverage and the service and had promptly paid their losses. The crisis was over and underwriters had done a splendid job.

The first six months of 1943 continue to show an improvement. The business has been profitable and rates have come steadily down. Our Navy is attacking the submarines at sea as well as defending our convoys. Our Air Forces are not only guarding our ships and shores but are bombing enemy bases and shipyards. We have, I think, the right to be optimistic and to expect that by the end of this year the submarine menace will be so reduced that our ships and their cargoes can proceed without undue loss.

In closing I would like to express some thoughts on the future of American marine insurance. We are discussing an international business, although American insurance companies have largely confined their activities to the United States and Canada.

The American market consists of American owned and controlled companies whose stockholders are predominately American, and of British companies and their American subsidiaries, the ownership of which is predominately British. The latter represent about one-third of the capacity of the market. As stated above, the British companies have been welcomed into the United States. They are strong, well managed institutions and have well served the insuring public of this country. There should be no change in this status.

On the other hand American marine companies do little business in England, the world market. The experience of a large life insurance company would indicate that American insurance is not welcome. American insurance has come of age. It would be wise and politic for the British to extend to us that status. There are no legal or technical difficulties. It is entirely one of attitude.

There will be great business activity after the war throughout the world. American marine insurance should participate with their strength and service. This is not an easy job.

As far as American business is concerned the American market should be the primary one supplemented by the healthy competition of the London market. As long as any foreign company has such ready access to the American market, certainly we should expect that here is where the normal risk should be placed, although we would deprecate any narrow nationalistic approach or any attempt to force by statute or propaganda. If we conceive our first duty as that of giving the policyholder the best and cheapest protection, the result will be attained.

Now, gentlemen, you are insurance counsel who know the strength and weakness of American insurance. You can help us and you should help us. It must be conceded that during the early days of insurance in this country there was built up a certain amount of prejudice against insurance companies in the minds of the general public. While this feeling was largely based on misunderstanding, I think we can all agree that it found some support in the highly technical attitude assumed by some of the insurance companies during that period. In modern times, the relations between insurance companies and their assureds have become much more friendly and cooperative. Today the companies welcome legitimate claims, and almost never set up technical defenses against such claims. Nevertheless, the old prejudice dies hard, and I think that you gentlemen will bear me out when I say that insurance companies are still somewhat underprivileged in the courts. This is a field in which you

gentlemen can render great service. The same is true of our public relations generally. In our relations with the public and with the government the importance of our strength, our capacity to reduce preventable loss and our wish to meet promptly all reasonable claims can be made manifest by you. Tell us also where we can correct our weaknesses and build up and increase a happy relationship with the insuring public.

Report Of Committee On Highway Safety And Financial Responsibility

SINCE the last report of your Committee three more states, to-wit: Indiana, Michigan and Oregon, have enacted Financial Responsibility Laws.

The Indiana and Oregon laws are very similar to the New York Law (Vehicle and Traffic Law).

The Indiana law took effect July 1, 1943.

The Michigan law, which will take effect July 30, 1943 differs somewhat from the New York Vehicle and Traffic Law in that it requires that the motorist report only accidents involving personal injury or death. The present Michigan law covers the property damage feature but only after failure to satisfy judgment. Under the present provisions of the Michigan law, if the motorist is involved in an accident which results in personal injury or death, he must file a report with the Secretary of the State within ten days and failure to file such report constitutes grounds for revocation of the operator's license or registration certificate. The report must state also whether there is insurance in force.

The Committee is advised further with reference to the Michigan law that if there is no insurance in force, the motorist must either settle all claims within thirty days and file an affidavit satisfactory to the Secretary of State to this effect, or he must file security by cash or bond within the normal limitation which is held to satisfy any judgment secured within six months. Failure to do one or the other results in revocation of license. In all cases of revocation of license, the motorist must file proof of financial responsibility for the future before the license is restored.

NEW YORK VEHICLE AND TRAFFIC LAW

The New York Legislature amended Section 94-F of the Vehicle and Traffic Law to the extent that a report of the accident was not required to be filed with the Bureau of Motor Vehicles when less than $25.00 property damage was occasioned to the property of any one person. As the result of this amendment, reports declined to the extent that reports received during the last eight months of the year 1942 totaled approximately the same as those received during the first four months of the same year. The total number of accident reports received in the year 1942 was 325,673. The amendment therefore greatly reduced the number of reports which had to be filed since the number of claims reported before the amendment for the first four months of 1942, exceeded 160,000, which was slightly more than an average of 40,000 per month and had the amendment not been enacted, the Bureau of Motor Vehicles estimated that there would have been filed approximately 500,000 reports during that year.

It will be seen, therefore, that the amendment enacted by the New York Legislature dropping out the $25.00 property damage report requirement greatly reduced the number of claims to be administered.

The annual report of Deputy Commissioner Culloton with reference to the New York Safety Responsibility Law stated that it was estimated that on July 1, 1941, only 30 per cent of all motor vehicles registered in the State of New York were covered by insurance which afforded protection to persons suffering bodily injury or property damage as the result of motor vehicle accidents. Under the Vehicle and Traffic Law, certain types of motor vehicles were required by law to maintain insurance coverage. These include, among others, taxi cabs, omnibuses, and all motor vehicles used for carrying or transporting passengers for hire, including motor vehicles operating under franchise by a corporation subject to the provision of the Public Service Law. The report of the Deputy Commissioner states:

> "It may reasonably be assumed that the insurance coverage required by statute would affect approximately fifty per cent of the vehicles which were insured on July 1, 1941. On this assumption, it can be concluded that only fifteen per cent of all passenger vehicles and others not re-

quired to carry insurance by statute were insured for the benefit of the public. On the basis of 2,000,000 passenger registrations in the State of New York during the year 1941, these figures indicate that only 300,000 of the vehicles were covered by insurance. It was undoubtedly with this appalling situation in mind that the sponsors of the bill were urging its consideration and passage."

The report further states:

"In addition to the number of uninsured owners and operators who deposited security with the Commissioner of Motor Vehicles, cognizance must also be taken of the remarkable increase in insurance coverage which occurred between July 1, 1941 and July 1, 1942. Any figure which is given to indicate this increase in insurance coverage must necessarily be an estimate. However, on the basis of actual study, the estimate can be accepted as an accurate one. Using, as the measure, the number of notices of insurance (Form SR-21) which are received by the Bureau attached to or accompanying accident reports, it is estimated that between 75 and 80 per cent of all owners or operators who are involved in accidents are covered by insurance at the time of the accident. * * * If this estimate is approximately correct, it indicates that there has been a general increase in insurance coverage over the July, 1941 estimate of better than one hundred per cent. It may also be argued, on the basis of the previous breakdown of the July, 1941 insurance coverage, that almost the entire increase shown in 1942 was on passenger cars. During the year 1942, 164,-140 SR-21's (notices of policy) were filed with the Bureau."

The report of the Deputy Commissioner further states:

"During the year 1942, the Suspension and Revocation Section of the Bureau of Motor Vehicles issued 118,264 suspensions or revocations. Out of this total number, 62,666 were issued because of the failure of owners and operators to comply with the provisions of the Safety Responsibility Law. This lack of compliance could have occurred because of two reasons: (1) the failure to establish evidence of satisfactory insurance coverage at the time of the accident, or (2) in the absence of insurance coverage, the failure to deposit security and furnish proof of financial responsibility for the future in accordance with the requirements of the law. During the early months of 1942 when the volume of work which was visited upon the Safety Responsibility Section was so great that the personnel and facilities available were unable to cope with it, some suspension orders were issued erroneously. As soon as knowledge of the error was manifested, a termination order was issued to lift the suspension. This condition was gradually improved and overcome, so that by the end of April, very few, if any, suspension orders were issued which were not properly issued and justifiable. During the course of the year, 40,402 termination or restoration orders were issued. The vast majority of these were issued following compliance by the suspended owner or operator with the requirements of the Safety Responsibility Law. In all, 12,553 owners and operators who had become subject to the law by reason of their not being able to give evidence of insurance coverage at the date of the happening of the accident have furnished proof of their future responsibility by means of an insurance certificate (Form SR-22).

"In the publicity which was given to the new law prior to its effective date, three principal reasons were advanced in support of it. They were: (1) that persons who had suffered bodily injury or property damage as the result of motor vehicle accidents would have reasonable assurance of their ability to collect or be paid for the injury, damage and financial loss which they had sustained; (2) that those owners and operators who failed to satisfy the financial obligation imposed upon them by reason of a motor vehicle accident and who failed to give proof of their continued financial responsibility would be deprived of the right to continue using the highway as registrants or operators of motor vehicles; and (3) that registrants and operators whose previous record indicated their inherent disregard for public safety and personal rights in the use of the highways would be removed from the highway as a menace to other users thereof. It is on the basis of the foregoing three publicity points that the operation of law can best be judged with respect to its benefit to the public.

"The foregoing activity with respect to suspensions has substantially filled the

second purpose of the law, that is, it has served to remove from the highway those owners and operators who were not willing or able to compensate for damage already caused, and to give assurance of their future financial ability to compensate for future accidents.

"The third benefit which the law contemplated or intended to accomplish was the removal from the highway of those owners and operators whose previous operating record indicated that they were a menace to the traveling public. Some of the suspensions included in the 62,666 which were made under the Safety Responsibility Law, and some of the suspensions in the total of 118,264 which were made under other provisions of the Vehicle and Traffic Law, include cases which fall within this third category. It is difficult to distinguish whether an operator convicted for reckless driving suffered suspension under the safety responsibility provisions of the Vehicle and Traffic Law, or under the provisions of section 71 of the law. The ultimate result, however, is the same since the suspension under any section of the law has removed a possible source of danger from the highway."

"With respect to any statement previously made concerning the probabilities of a person sustaining personal injury or property damage being compensated for the injury or damage, it must be rigidly borne in mind that any recovery must be predicated upon the existence of a substantial right to be compensated. If the injury, property damage or financial loss arising from an automobile accident was incurred because of actual or contributory negligence on the part of the injured or damaged person, or attributable to him as a matter of law, the right of recovery is no stronger under the Safety Responsibility Law than under any other law."

The Committee is advised that there has not been any important change made by the New Hampshire Legislature, recently adjourned, in the Financial Responsibility Law of that state.

The consensus of opinion is that both the New York and New Hampshire Financial Responsibility laws are meeting, in a practical way, the problem sought to be corrected.

Respectfully submitted,

JOHN L. BARTON, *Chairman.*
HERBERT W. J. HARGRAVE
LOUIS ELIOT WYMAN
RICHARD H. FIELD
RAYMOND N. CAVERLY
MILTON L. BAIER,
L. J. CAREY
FRANCIS M. HOLT

Report Of Life Insurance Committee

TO BE consistent with the spirit of the times, at least insofar as it is reflected by many of the more popular radio programs, the undersigned committee has developed a Quiz Program for you. We hasten to reassure any of you who shudder at the thought of being confronted with complex legal questions when you have neither law books or a briefing clerk at hand that not only have we prepared the questions, but within the limits of our ability we will endeavor to furnish the answers.

You may select any field of insurance law which appeals to you as the general subject from which our questions will be chosen. Do you prefer fire insurance law, the problems of workmen's compensation insurance, or the complications of aviation or automobile insurance law? Perhaps you prefer questions in the field of life insurance law. You do? That's fine. We hoped you would because it is your Life Insurance Committee that is making this report.

Our questions were selected from some of the most significant decisions on life insurance law that have been published since the last meeting of our Association. Let's start with the $4 question:

Do fraudulent misrepresentations as to applicant's participation in aviation activity contained in an application void a policy issued under a conditional receipt making the insurance effective on acceptance by the company? *Warren v. New York Life Ins. Co.*, 5 Cir., 128 F (2d) 671, decided June 3, 1942, provides the answer.

Applicant applied for life insurance including a double indemnity provision and paid the first premium. The receipt given him recited that if the application were accepted by the company the insurance would be ef-

fective upon acceptance and as of the date of the application without delivery of the policy to him. In the application applicant stated he had never flown in an airplane and did not intend to participate in aeronautics. In fact he had previously flown in an airplane and on the day he signed the application he enrolled in and commenced an aviation course.

Without knowledge of these facts the application was approved. After sending the policy to its agency office for delivery, the falsity of applicant's answers was discovered by the company. The company ordered the policy returned to the home office and directed the agent to refund the premium. The policy was not delivered to applicant. Notice of suspension of the application was sent to applicant but the premium was not refunded. Instead the agent gave him an aviation questionnaire as a preliminary to the issuance of a policy with aviation restriction. The applicant was killed in an automobile accident ten days later and before he had completed the aviation blank.

The beneficiary under the policy brought suit on the theory that the application had been accepted by the company and under the terms of the receipt given the applicant, the delivery of the policy was not necessary to make it effective. An alternative ground of the beneficiary's suit was alleged negligence and delay on the company s part in failing to return the premium and inform applicant that the application had been declined.

The company took the position that the policy had been suspended because of the applicant's fraudulent misrepresentations and that the applicant had been advised of suspension and the reason for it.

The Court held that the suspension of the policy because of a fraudulent misrepresentation was effective and that the applicant had been notified. It was held further that the failure to issue a new policy with aviation restriction was not due to any negligence of the company. In sustaining the position of the company the Court said of the deceased applicant:

> "His failure to receive a policy or to have insurance coverage in the interim was due to his own misstatements coupled with his own subsequent failure and neglect to complete the application. His beneficiary cannot recover for his negligence."

We suspect that at least one of our members had the correct answer to the $4 question. Richard B. Montgomery, Jr., represented the New York Life Insurance Company in the foregoing case. On the assumption that most of the rest of you answered correctly our $4 question, now we'll double the stakes and present the $8 question:

Can the Collector of Internal Revenue distrain the cash surrender value of a life insurance policy in order to enforce payment of an insured's income tax obligation to the United States? This method of tax collection was attempted in *United States v. Penn Mutual Life Insurance Co.*, decided July 24, 1942, 3 Cir., 130 F (2d) 495, 142 ALR 888.

The insured under a policy of life insurance retained the right to change the beneficiary. To enforce a tax liability of the insured, the Collector of Internal Revenue served upon the insurance company notice of levy and a warrant of distraint against all property rights of the insured. An action followed to impose a penalty for failure to pay the cash value to the government.

Between the initial levy and warrant and a subsequent levy, the insured discontinued premium payments. The company applied the cash value to provide extended insurance for a reduced principal sum. By this method the cash value would be consumed ultimately. The insured made no effort to obtain the cash value at any time.

The government contended that the cash value was a reserve fund held in trust for the insured; therefore, that it was subject to distraint in satisfaction of his tax liability. The company maintained that since the cash value was a part of its unsegregated general assets, it was holding no determined property in trust for the insured. It argued that the cash value was due only on application by the insured and upon surrender of the policy. In the absence of such application the company maintained that it was liable for the amount of the coverage on the death of the insured so long as the cash value was sufficient to keep the policy in force.

The Court held that for property to be subject to levy and distraint three factors must exist: (1) Property or property rights must be in existence; (2) they must be in the possession of the one upon whom the Collector makes demands; and (3) they must be subject to distraint. The cash value of a policy is an existent property right and it is subject to distraint but the second factor was missing.

"While the policy endures, the insurer is powerless to compel the insured to exercise his option under the policy by accepting the cash surrender value thereof. . . Concurrently, the insurer's liability remains indeterminate. It is only by the voluntary action of the insured or by the terms of the policy, if the insured fails to act, that his rights or privileges under the policy may be accrued and determined. And until that happens, there is no definite amount owing by the insurer to the insured and, hence, no ascertainable property of the insured in the possession of the insurer."

From this the Court concluded that the Collector's action could not be sustained. The practical effect of this holding from the standpoint of any life insurance company home office, not to mention the insured, is self-evident.

So much for the $8 question. Do you want to take the $8 or will you try the $16 question? You want to try for $16? Fine, here is the $16 question:

Can the insurance company, by agreement with the holder of the master policy, reduce or modify a certificate holder's rights under an annually renewable group life insurance policy during the policy year without notice to and approval of the certificate holder? *Poch v. Equitable Life Assurance Society*, decided September 29, 1941, 343 Pa. 119, 22 A (2d) 590, 142 ALR 1279 furnishes the answer.

Insured took an individual policy under an employees' association group plan paying the entire premium for the certificate himself. The individual certificate was subject to the annually renewable master policy held by the association. Both the certificate and the master policy provided for monthly payments for permanent disability, with continuing payments to a beneficiary in the event assured's death during disability up to the face amount of the certificate.

In June, 1932, the master policy was renewed for one year. The following September an agreement was made between the association and the insurer for the cancellation of the disability clause. This agreement purported to terminate the disability benefits of existing as well as future certificates written under the group policy. Insured was not notified of the change nor was the premium rate reduced. No request was made to insured to turn in his certificate in exchange for a new one embodying the change. The following January he became totally disabled and after his death, his beneficiary sued to recover the full amount of disability benefits.

The company contended that the cancellation of the disability benefits by agreement with the association was binding on the insured despite the absence of notice to him. On the company's behalf it was agreed that since the only parties to the master policy were the company and the association any changes made by agreement between them were binding on those whose rights arose from the master policy.

Insured's beneficiary contended that the insured obtained a vested right when the master policy was renewed for one year in June 1932, and that such right could not be impaired during an annual period without insured's consent, nor in any event without giving him notice of the change.

The Court held that the method used by the insurance company in this case was not effective to eliminate the disability benefits which the policy provided. Such a change does not require the consent of each certificate holder but it does require timely notice to each participant so that he can protect himself by procuring other insurance or exercising conversion privileges afforded him by the group policy.

In explaining its views the Pennsylvania court said:

"Under a group policy . . . the insured employee must be regarded as a party to the insurance contract at least to the extent that the group policy cannot be cancelled or any of its effective provisions eliminated by either the employer or insurer, except in a manner provided by the policy, without giving such employee notice of the intended cancellation or modification. . . In the absence of notice an agreement of cancellation or modification . . . is, as to such employee, legally ineffective to relieve the insurance company from liability under the original policy."

If you have answered all the previous questions correctly, you are entitled to try the $32 question. Here it is:

Where the beneficiary under a life policy contracts with the company to retain the proceeds and make interest payments to the beneficiary for life, or to pay principal if requested, and to pay any remaining balance

on the beneficiary's death to certain named persons, does that constitute testamentary disposition by the beneficiary requiring the execution of the agreement as a will is executed, or does the agreement with the insurance company create a third party beneficiary contract? This question involves an exceedingly interesting application of the contract theory of life insurance proceeds as opposed to the property theory. We find the answer in *Mutual Benefit Life Insurance Co. v. Ellis*, decided January 16, 1942, 2 Cir., 125 F (2d) 127. (Certiorari denied in the Supreme Court, 316 U. S. 665, 86 L. Ed. 741, 62 S. Ct. 945, 138 ALR 1478).

A life insurance policy, payable to insured's widow, contained optional methods of settlement.

After insured's death the beneficiary exchanged the policy for an "Interest Income Bearing Certificate" which entitled the beneficiary to interest payments for life and to principal if requested. Any balance was payable on the beneficiary's death to three sisters of the original insured. When the beneficiary died the administrator of her estate contested the sisters' right to the proceeds of the certificate on the ground that the proposed disposition of the proceeds was an attempt to convey property after death without a properly executed will.

On behalf of the three sisters it was argued that their rights arose from a contract between the beneficiary and an insurance company under which the three sisters were third party beneficiaries, that testamentary disposition was not involved.

In sustaining the contention of the sisters, the court held that the rights of the sisters arose from the contract made between the original beneficiary and the company after the death of the original insured. According to the Court:

> "A sufficient answer to the argument that it would violate the Statute of Wills to enforce the agreement for the sisters lies in the fact that their right to enforce is based upon a contractual obligation and not on any interest in the property of the decedent . . . The title to the proceeds of the policies passed to the company, leaving only contractual rights in Mrs. Addie and the sisters."

And now we come to the $64 question. You have $32. You can take it or you may try for $64. You'll try the $64 question? We are glad you want to try for it but don't feel badly if you miss. The answer was not available until June 5, 1943, with the decision of the Circuit Court of Appeals for the 7th Circuit in *Polish National Alliance v. National Labor Relations Board*, citation not yet available. Here is the question:

Is a life insurance company, or any other insurance company which does business in several states, engaged in interstate commerce and therefore subject to regulation by the National Labor Relations Board for unfair labor practices?

The Board found the Polish National Alliance was engaged in the life insurance business and was guilty of unfair labor practices within the Board's jurisdiction and thereupon entered its order containing the usual cease and desist provisions and affirmative requirements. The Alliance contended that it was not subject to the National Labor Relations Act and to the jurisdiction of the Board. The jurisdiction provision of the Act empowers the Board to prevent any person from engaging in an unfair labor practice affecting commerce.

A long line of Supreme Court decisions including *Paul v. Virginia*, 75 U. S. 168, and *New York Life v. Deer Lodge County*, 231 U. S. 495, were cited in support of the Alliance's contention that even if it were engaged in the insurance business, nevertheless it was not subject to the Labor Relations Act for insurance is not commerce. The Court held that these prior decisions were not decisive because in each the Court was considering the power of a state to tax or regulate, not the power of Congress under the commerce clause. The Court stated that the line which marks the beginning of a state's power to tax or regulate is not the terminal boundary of Federal power to regulate commerce. The Court relied on *Associated Press v. National Labor Relations Board*, 301 U. S. 103 in arriving at its conclusion that the insurance company was subject to the Act. In referring to the insurance business the Court stated:

> "Applying the pronouncement of the *Associated Press* case, such business is interstate commerce within the power of Congress to regulate."

Considering the importance of this decision to the entire insurance business, it is reasonable to assume that the Alliance will petition the Supreme Court for a write of certiorari.

In conclusion, the Life Insurance Committee advises each member of the Association who scored 100 per cent on this quiz program that he is entitled to $64 which will be paid by the treasurer of the Association on demand. Affidavit of the correctness of your answers should be sent the treasurer by mail. Also, just tear the top off a German or Japanese bombing plane, enclose it with your affidavit, and $64 will be sent you without delay.

Respectfully submitted,
PAYNE KARR, *Chairman*
ROBERT D. DALZELL
MORRIS E. WHITE
ROBERT A. ADAMS
E. A. ROBERTS
W. CALVIN WELLS III
JULIUS C. SMITH.
PAUL J. MCGOUGH, *ex-officio*

Report Of Casualty Insurance Committee

(Soldiers' & Sailors' Civil Relief Act of 1940)

THE Casualty Insurance Committee for 1942 submitted a report which analyzed the law on the right of a person in the service to a Stay of Proceedings under the Soldiers' and Sailors' Civil Relief Act of 1940. The survey made by members of the Committee made it possible for the report to include all cases on this subject, and for the convenience of the members all automobile and insurances cases were digested.

All members of the 1942 Committees were reappointed by President Willis Smith in his statement that appeared in the October, 1942 issue of the Journal. Since the report of this Committee for 1942 proved to be of great interest to the profession, the Committee decided that service could be rendered to the members of the Association by bringing the 1942 report up to date to include all cases in which decisions have been published prior to June 1, 1943.

This report is therefore to be considered a supplement to the 1942 report, which appeared in the October issue of the Journal published in that year.

FEDERAL

*Royster vs. Lederle (1942) 128 F. (2) 197.

*Bowsman vs. Peterson (1942) 35 Fed. Supp. 742.

ALABAMA

Ex parte Moore, Ala. 12 So. (2) 77.

CALIFORNIA

Reynolds v. Reynolds, Cal. 128 P. (2) 172; 134 P. (2) 251.

GEORGIA

Cedartown vs. Pickett, Ga. 22 S. E. (2) 318.

Pope vs. U. S. F. & G., Ga. 20 S. E. (2) 618; 21 S. E. (2) 289.

KENTUCKY

*Smith vs. Sanders, 293 Ky. 6; 168 S. W. (2) 359.

LOUISIANA

Price vs. Phillips, La. 12 So. (2) 59.

*Laperouse vs. Eagle Indemnity Co., La. 16 Auto 817.

MISSOURI

State ex rel McGaughey vs. Grayson, Mo. 163 S. W. (2) 335.

NEW YORK

Flushing Savings Bank vs. Hallewell, 35 N. Y. S. (2) 521.

Refrigeration & Air Conditioning Inst. vs. Bohn, 36 N. Y. S. (2) 69.

National Bank vs. Van Tassell, 36 N. Y. S. (2) 478.

Isaacs vs. Isaacs, 36 N. Y. S. (2) 651.

*Shisler vs. Becker, 38 N. Y. S. (2) 60.

Kelley vs. Kelley, 38 N. Y. S. (2) 344.

Fell vs. Fell, 38 N. Y. S. (2) 381.

Nassau Savings & Loan Association vs. Ormond, 39 N. Y. S. (2) 92.

Jefferson Estates vs. Wilson, 39 N. Y. S (2) 502.

O'Leary vs. Horgan, 39 N. Y. S. (2) 555.

Application of Aber, 40 N. Y. S. (2) 48.

NORTH CAROLINA

Lightner vs. Boone, 222 N. C. 205; 22 S. E. (2) 426.

*Batts vs. Little, 222 N. C. 353; 23 S. E. (2) 41.

OHIO

*State ex rel Buck vs. McCable, Ohio, 45 N. E. (2) 763.

*Rosenthal vs. Smith, Ohio, 42 N. E. (2) 464.

PENNSYLVANIA

Commonwealth vs. Rizzuto, 11 Som. 138; 56 York 57.

Jenkintown Bank & Trust Co. vs. Greenspan, 11 Som. 144, 58 Montg. 275.

National Bond & Investment vs. Christner, 24 West. 145.

TEXAS

*J. C. Penney Co. vs. Oberpriller, Texas 163 S. W. (2) 1067.

WASHINGTON

In re Bachor, Wash. 132 P (2) 1027.

*State ex rel Frank vs. Bunge, Wash. 133 P (2) 515.

Richey & Gilbert Co. vs. Northwestern Natural Gas Corp., Wash. 134 P (2) 444.

*See comments infra.

FEDERAL:

On June 12, 1941, Royster sued Ruggiero for personal injuries received in auto accident. Ruggiero was inducted into military service on June 28, 1941. At pre-trial hearing cause was continued until 60 days after Ruggiero's discharge from Army. Royster appealed to annul that order. Ruggiero carried a 5/10 liability policy. Royster offered at time of motion for continuance to look solely to insurer for payment of any judgment. Court held that stay should be granted on condition that insurer execute a bond in sum of $5,000 conditioned on payment of whatever judgment not in excess of $5,000 that Royster might eventually obtain against Ruggiero.

Royster vs. Lederle (1942) 128 F. (2) 197.

In an action for personal injuries and property damage arising out of an automobile accident, the Court allowed a stay of proceedings under the Civil Relief Act, stating: ". . . The necessity of the presence of a party at the trial of a civil action for damages against him is admittedly not absolute, but it is at least reasonable. Within due limitations, he ought to be allowed to testify personally before the jury rather than through the notoriously indifferent medium of deposition. He should be allowed to scrutinize the jury list, to confront the jury as it is empanelled, to observe the responses of its members on the voir dire examination, to make suggestions and have them and his preferences and his possible relation to the jurymen considered, in the very important step of peremptory challenges. . . . It is true that the language (of the Civil Relief Act) is permissive. But, it is likewise obvious that it reflects an instructive legislative policy to place the person engaged in the military establishment beyond the effect of the urgencies and uncertainties of pending litigation, and to allow him a reasonable period following his discharge to reorient himself with a view to the trial of his cause. . . The language of the Act appears to the Court to impose upon the party resisting the application for a stay the burden of satisfying the Court of the absence of material impairment by military service of the defendant's ability to defend himself. No attempt has been made here towards such a showing; and the Court cannot readily comprehend how such attempt could ordinarily be successful, or the showing made in furtherance thereof persuasive. . ."

Bowsman vs. Peterson (1942) 45 Fed. Supp. 742.

KENTUCKY:

Suit was filed against the defendant to recover for damage to the plaintiff's automobile. There was a verdict for plaintiff and the defendant appealed. The Supreme Court reversed the decision in the lower court because of the admission of incompetent and prejudical evidence. Prior to the trial the defendant filed a motion for a stay under the Soldiers' and Sailors' Civil Relief Act of 1940, supported by an affidavit of the attorney which set out that the defendant had been inducted into the armed forces and that he was engaged in military duties and could not be present at the trial. The affidavit further set out that the attorney had been advised by his client that he had made an effort to be relieved of his military duties but that at that time he was on maneuvers and would not be able to return to his camp until sometime the following month. The Supreme Court stated that it must be conceded that the Act does not make it compulsory on the courts to grant a stay or a continuance, but that "we doubt that the matter here involved is of such importance as to justify the court in refusing a continuance or a stay of the trial." The court expressed the opinion that the lower court should have granted a continuance until such time as the appellant was able to obtain a furlough in order to attend the trial.

Smith vs. Sanders, 293 Ky. 6; 168 S. W. (2) 359.

LOUISIANA:

Plaintiff sued driver and his employer's insurer. Driver's answer was general denial and his employer's insurer, after denying pertinent allegations, also claimed that driver was not in the course of his employment. Driver, in answer to interrogatories, admitted facts showing his negligence and that he was within the scope of his employment. Shortly after answering interrogatories driver was inducted

into the armed forces. He then asked for a stay. The insurer also joined in request for stay, alleging that the liability of the defendants must be determined on the culpability vel non of the driver. A stay was granted both. Plaintiff appealed. The Supreme Court set aside the ruling of the trial court insofar as it granted a stay to the insurer. The court stated that the provisions of the Act were intended solely for the benefit of those in the armed services; that while the Act permits the granting of stays to others subject to the liability, yet where the civil rights of the person in military service are not materially affected the courts would not be warranted in granting a stay. The court cited Swiderski vs. Moodenbaugh, 44 Fed. Supp. 687, as authority for the proposition that if the insurer were sued alone it would have no defense based on the fact that the driver was in military service.

At the same time the court pointed out that the plaintiff had sued for $18,654.50; that the insurer's limit of liability was $10,000.00; that the driver had made no admission touching the quantum of damages and noncluded that his defense in this respect might be materially affected by reason of his inability to be present at the trial, which fact was sufficient to give him a stay.

Laperouse vs. Eagle Indemnity Co. (La.) 16 Auto 817.

NEW YORK:

A judgment was entered against the defendant in the City Court. Shortly thereafter the defendant was inducted into the United States Army. The case was appealed and the plaintiff filed a motion to dismiss the appeal. The court held that the Act was "intended to protect a soldier or sailor in the military service during the pendency of an action before judgment and pending the determination of an appeal from said judgment." The court denied the motion holding that the ability of the defendant to prosecute his appeal would be materially affected by reason of his military service.

Shisler vs. Becker, 38 N. Y. S. (2) 60.

NORTH CAROLINA:

The accident which gave rise to this litigation occurred after the defendant had entered the service and while he was stationed at Camp Davis, North Carolina. Several suits were filed and shortly thereafter the defendant was transferred from Camp Davis under military orders. The cases came on for trial at the September term of court, and the attorneys for the defendant filed a motion supported by an affidavit for a stay under the Act. The trial court consolidated the cases and ordered them tried at the November term of court. An appeal was taken. The Supreme Court held that the defendant had sustained no injury, unless it could be said that it imposed upon him the necessity of renewing his motion whenever the cases were calendared for trial. The Supreme Court stated in its opinion that "We are inclined to regard the Act of Congress as definitely requiring a more permanent action of the court when the condition contemplated by the Statute require it, rather than a mere postponement for the current term." The question was not presented for review, and the court dismissed the appeal without prejudice to the defendant's right to renew the motion and have his rights thereupon determined.

Batts vs. Little, 23 S. E. (2) 41; 222 N. C. 353.

OHIO:

The defendant struck and injured the plaintiff in December, 1940, and six months later in June, 1941, he enlisted in the armed forces of the Dominion of Canada. Later the suit was filed and his counsel filed a motion to stay all further proceedings for the duration of the war. The motion was allowed, whereupon the plaintiff filed an action seeking a Writ of Mandamus against the Judges of the Common Pleas Court of Lucas County, one of whom granted the suspension, to require them to vacate the Order and proceed with the trial of the personal injury case. The Supreme Court held that a trial court has supervisory power and control over its docket, and that the passing upon motions for continuances rests within the sound discretion of the court. The court stated that

> "While the inability of a party to be present at the trial because engaged in foreign military service does not, as a matter of right, entitle him to a continuance, yet the court may, in its discretion, grant a continuance for that reason. Elliott vs. Lawson, 87 Ore. 450, 170 P. 925; Vaughn vs. Charpiot (Tex.) 213 S. W. 950; 17 Corpus Juris Secumdum 215, Section 30.
>
> "The exigencies of war bring disturbance and inconveniences to litigants as well as to persons of other groups, and it is the function of the law to alleviate or remedy such inconveniences so far as possible, and to balance those which cannot be so remedied. To this end it is the duty of the

courts at all times to control their dockets in the interests of justice to all.

"Although the defendant is enlisted in the military service of the Dominion of Canada, an ally of the United States in the world war, and not in the military service of the enemy, he is entitled to the same consideration as though he were abroad in the military service of the United States."

The Supreme Court refused to allow the motion for a Writ of Mandamus and held that the trial court had not abused its discretion.

State ex rel Buck vs. McCable, Ohio 45 N. E. (2) 763.

In the case of *Rosenthal vs. Smith,* 42 N. E. (2) 464, there was a verdict for the defendant in the lower court, and the plaintiff appealed. When the assignments of error, briefs and bill of exceptions were not filed within the prescribed time the defendant moved to dismiss the appeal. The Appellant replied that the motion was well taken, but urged that the motion should be overruled because since the appeal had been taken he had been inducted into the armed forces of the United States and that counsel had not been able to contact him. The Supreme Court held that the filing of briefs is the work of counsel only and does not require the presence nor assistance of the client. The motion to dismiss was sustained.

TEXAS:

Employee, in course of business, had an automobile accident. Plaintiff sued both employee and employer. Return day was March 17, 1941. Court convened successively on July 28, 1941, and November 10, 1941. The case was set for trial on December 8, 1941. The employee never filed appearance nor presented himself when cause was tried. Judgment jointly and severally was taken against employee, who was in default, and against employer. The employer appealed, assigning among other things that employee at time of trial and default judgment was in military service and not given the benefit of the Soldiers' and Sailors' Civil Relief Act in the appointment of counsel and representation; that it was error to enter judgment against employer, since the judgment against employee was not final and therefore did not dispose of all the parties to the suit. The Court of Civil Appeals denied the employer's claim to relief, stating that even though the judgment against the employee might be voidable, the point was reserved to the employee only and not available to the employer. The court pointed out that at all terms of court the employee was available—in fact, was in the city at the time the case was called to trial, but voluntarily entered the armed services on December 9, 1941, the day after he had intentionally made default. The court further found that the employee did not and does not ever intend to defend against the action. The decree of the trial judge that the plaintiff recover jointly and severally against the employee and the employer was affirmed.

J. C. Penney and Co. vs. Oberpriller, Texas 163 S. W. (2) 1067.

WASHINGTON:

A son driving his father's automobile was involved in an accident. Plaintiff sued both son and father—the son as driver, and the father under the Family Car Doctrine. Answering separately each alleged that the son was in military service, and in reliance upon the Soldiers' and Sailors' Civil Relief Act moved jointly that action be stayed. Among other things, the father's supporting affidavit set out that his son was alone in the automobile; that he knew of no witness to the accident other than his son; and that he could not safely go to trial without his son's presence. The trial court granted a stay as to the son, but refused to stay action as to the father. On the father's appeal the Supreme Court refused to disturb the ruling of the trial court, stating that even assuming that Sec. 513 of the Act, covering ". . . sureties, guarantors, endorsers, and others subject to the obligation or liability . . ." applied to the father, whether or not the stay should be granted was wholly within the discretion of the trial court. Not indicating that it would have made any difference in the decision, the court pointed out that there was no showing that it would be impossible to take the son's deposition or that the trial could not be so set as to have the son personally present.

State ex rel Frank vs. Bunge, Wash. 133 P. (2) 515. Respectfully submitted,

FLETCHER B. COLEMAN, *Chairman*
FORREST A. BETTS
MURRAY G. JAMES
LESLIE P. BEARD
MART BROWN
LEWIS C. RYAN
H. L. SMITH
F. B. BAYLOR, *ex-officio.*

Report Of Fidelity And Surety Law Committee

FURTHER consideration of our preliminary report (July 1942 Journal, Page 39) brings sharply to our attention the fact that we took in a good bit of territory. Any attempt at complete coverage of the three subjects listed would expand this report beyond reasonable bounds. Fortunately quite a bit of the ground has been covered recently by others, and their articles are readily available for reference.

1—THE EFFECT OF THE WAR (INCLUDING RELATED FEDERAL LEGISLATION) ON FIDELITY AND SURETY BONDS.

The outstanding question which has been raised under this heading relates to the interpretation of the Federal Assignment of Claims Act of 1940. Comment and analysis have been submitted by Mr. Allen Wight of Dallas (1941-2 ABA Section of Insurance Law Report, 167) and Mr. Alexander Foster, Jr., of New York (1942-3 ABA Section of Insurance Law Report, 159, 168-171). Recently the inevitable test case has arisen, and is now pending in the Court of Claims. The contending parties are Massachusetts Bonding and Insurance Company, surety, Hardin County Savings Bank, assignee, and D. M. Kelleher, Receiver in Bankruptcy of Ben B. Hogenson, contractor. The case is described and the issues are discussed in most clear and interesting fashion by Mr. E. M. Clennon, in the April 1943 Journal, page 41.

The bank relies principally upon *Town of River Junction v. Maryland Casualty Company*, 110 Fed. (2d) 278 (CCA 5), and upon the argument that unless it has obtained, as assignee, rights superior to the equities of the surety company, the 1940 Act has accomplished little or no change in the law and has fallen short of its intended purpose. The surety's position is that while the 1940 Act removed a restriction against assignment and thereby gave the assignment validity, nevertheless the contractor could assign no more rights than he had, and the assignee is therefore subject to the equitable right of subrogation of the surety company.

In our preliminary report, we ventured some remarks about the difficult problems of draftsmanship. The language of this 1940 Act is no outstanding accomplishment in that respect. A few well chosen words could have made its meaning so clear as to be beyond any reasonable doubt or argument. A law as simple as this one, adopted after hearings and consideration, ought not to leave open for argument and litigation the question as to whether the assignment is merely valid, transferring to the assignee such rights as the assignor has, or is paramount, giving to the assignee additional rights superior to those of the contractor, and to the equities and claims against him. It is evident from the record of the committee hearings that this question as to the construction of the law was considered, but apparently not as thoroughly as it should have been. At least some of the members of the judiciary committee seem to have brushed the question aside, thinking that it was clear that the assignee would have no greater rights than the assignor. The trouble is that it was not made clear enough to dissuade the banks and loan agencies from claiming a contrary construction. Congress could still, by a simple amendment of about two lines, eliminate all doubts as to the meaning. But as the Act stands, the surety companies suffer the expenses, and wholly unnecessary uncertainties arising from its failure specifically to provide against the construction now claimed on behalf of Hardin County Bank.

We submit that the surety's position is correct, and that if the banks or other lending agencies have relied upon a contrary construction, they had no substantial justification in so doing. The Town of River Junction case has no bearing upon the construction of the statute, but is a decision contrary to the weight of authority, limiting the surety's right of subrogation. See the rule stated and cases cited in the annotation, 134 ALR 738, part II; and in *Standard Accident Ins. Co. v. Federal National Bank of Shawnee* 112 Fed. (2d) 692 (CCA 10), 694 and note 4. The decision last cited was adhered to on rehearing, 115 Fed. (2d) 34, and is followed in a well written district court decision, *U. S. Fidelity and Guaranty Co. v. Alley and Co.*, 34 Fed. Supp. 604. There is a strong dissenting opinion in the Town of River Junction case; and it is very doubtful whether the Supreme Court of Florida (in which state the case arose) would reach the same conclusion. See discussion of *Union Indemnity Co. v. New Smyrna* in 134 ALR at p. 742. The denial of certiorari in the River Junction case adds nothing to its force, and especially not as the Circuit Court of Appeals reversed a ruling on the pleadings and remanded the

case for trial, so that no final determination of the issues had been reached.

The bank is wrong in urging that the 1940 Act accomplished nothing unless it gave rise to new and paramount rights. The Act is only an amendment of a law which prohibited assignments. Under the old law, no bank or lending agency could obtain collateral for a loan to the contractor, and any attempt to provide such collateral (unless by such indirect means as directing that checks be delivered in care of the bank and be cashed by the bank under power of attorney) was necessarily ineffective. Banks and other lending agencies do not make loans to contractors upon the assumption that the contractors will default under their contracts. Whenever such loans are justified at all, it is contemplated that the contractor will perform his contract. The purpose of the assignment is to see to it that the bank, upon such performance, receives the proceeds in payment of its loan. It usually works out that way. Such financing is legitimate and highly necessary to the successful completion of many war projects. It is neither necessary nor desirable that loans should be encouraged on a basis which will grant protection for them even if the contractor proves irresponsible, and fails to perform.

The proposition that the 1940 Act gives rise to new paramount rights, over and above the rights of the contractor himself, not only finds no direct support in the language of the Act, but defeats itself. There is no justification for a narrow and limited argument that these new and paramount rights are only strong enough to defeat the surety's equitable right of subrogation. The general principle is clear that a valid assignment transfers only what the assignor had, but if the assignee is to be held to have additional rights, growing out of the assignment, those rights should be primary and paramount as against all others, otherwise they will not hold against any other claim which is superior to that of the contractor himself. No one would contend that the right of the assignee is superior to the right of the United States to withhold payment on account of the default. We very much doubt whether anyone would contend, with any hope of success, that the right of the assignee is superior to the equities of materialmen and laborers. As pointed out by Mr. Wight, p. 172 of his article previously referred to, no surety is likely to put up the necessary money to complete performance after default without assurance that it will get the balance of the contract price, and it seems incredible that any assignee can require a surety to do so. All of these are rights of others superior to the rights of the contractor himself. So is the surety's right, under equitable subrogation, to recover any amounts necessarily advanced by it to pay materialmen and laborers, superior to any claim of the contractor. Unless all other similar superior rights are to be stricken down, this equitable right of the surety remains a superior equity, which may be enforced just as well against one who derives his claim from the contractor, as against the contractor himself.

The claim of the receiver in bankruptcy presumably has no greater validity on account of the assignment. In fact it should be weaker than before the 1940 Act. It isn't even good against the bank now, because the bank holds by assignment whatever the bankrupt had. It is well settled that the Trustee's claim isn't good against the surety. Re *Duncan and Sons*, 127 Fed. (2d) 640 (CCA 3). And in the Comptroller General's order, as set forth in Mr. Clennon's article, p. 47, it is stated that except for the 1940 Act, "the matter undoubtedly would be concluded by" decisions cited by the surety and the bank in support of their respective claims.

2—FURTHER CONSIDERATION OF INTERPTETATION AND QUESTIONS ARISING UNDER BANKERS' AND BROKERS' BLANKET BONDS

In addition to the articles referred to in our preliminary report, see "The Insurer's Rights of Subrogation Under 'Blanket Bond'," by Mr. Maynard Garrison of Los Angeles, 1942-3 ABA Section of Insurance Law Report, Page 185.

A case of some interest is *Provident Trust Co. v. National Surety Co.*, 44 Fed. Supp. 514. The district court came to the remarkable conclusion that a document having genuine signatures, but containing false statements, is "forged," in Pennsylvania. It seems that no amount of skill in draftsmanship can avoid occasional decisions of that sort, but it is to be hoped that on appeal a more reasonable definition of forgery will be applied.

On the very interesting question as to when a loss covered by a bankers' blanket bond occurs, the Supreme Court of Massachusetts held in *Bank v. Aetna Casualty and Surety Co.*, 38 N. E. (2d) 59, that where a loan was made on a forged note secured by stock accompanied by a forged power of attorney, the loss occurred at the time of the

original loan. There were numerous renewals, some of them after the bond sued upon became effective, and the bank eventually sold the collateral, guaranteeing, in connection with such sale, the signature upon the power of attorney. Several years later the true owner asserted a claim which was eventually enforced against the bank by the company whose stock had been pledged as collateral, the latter company having been required by the true owner to replace the stock and to make good the dividends which the true owner should have received. The insurer escaped liability, and the general principles expressed in the case seem sound, but there were interesting questions involved which were not discussed, and which raise doubts. The amount of the loan, which was made before the effective date of the bond, and renewed from time to time thereafter, was $1,430.00. The amount sued for is not stated, but must have been a different and presumably larger amount. It was made up of the amount which the issuing company was required to pay five years later to procure an equal amount of stock and to replace the lost dividends, together with the costs recovered by the true owner in her suit, and the counsel and witness fees, interest and costs, incurred by the issuer. Some of the amounts going to make up this ultimate liability may not have been losses arising from the forgery, although they appear to be natural results of it, and the surety company was notified of the suit by the true owner and of the action by the issuing company against the bank, was requested to undertake their defense, and refused to do so. As to the dividends, costs, counsel fees, and witness fees accruing about the year 1937 (together with any increased cost of the stock at that time if it had increased in value), how can it be said that those losses were incurred when the bank made a loan of $1,430 many years before?

Chase National Bank v. Fidelity and Deposit Co. of Md., 79 Fed. (2d) 84, which was referred to at page 199 of the article in the 1941-2 ABA Section of Insurance Law Report, mentioned in our preliminary report, is distinguished upon the ground that in that case the loan was made to a solvent bank so that no loss was incurred until the bank failed. There is no suggestion in the opinion in the Massachusetts case as to what the holding would have been, if it had been shown that the forger was solvent at the time of the original loan and afterward became bankrupt. Without undertaking to choose between the somewhat conflicting principles applied by the Massachusetts court and by the Second Circuit Court of Appeals, we do venture the suggestion that it is a rather unsatisfactory test for determining the date of loss under an indemnity bond, to say that it was incurred when the loan was made, if an insolvent or dishonest customer borrowed the money, while it occurs only at the date of later bankruptcy or receivership if the borrower was ostensibly solvent when the loan was made.

3—LIMITATION OF SUBROGATION RIGHTS WHERE DEFENDANTS' EQUITIES ARE CONSIDERED EQUAL.

Reference was made in our preliminary report to *National Surety Corp. v. Edwards House Co.*, 4 Southern (2d) 340 (Supreme Court of Mississippi, 1941). A later decision to the same effect is *Jones v. Bank of America*, 121 Pac. (2d) 94. In that case the court says that the plaintiff did not claim subrogation, but then goes out of its way to say, pages 98-9:

> "Almost universally it has been held that the doctrine of subrogation does not apply in favor of a surety company on a fidelity bond against persons who did not participate in the wrongful act of the wrongdoer."

This whole line of cases seems to be developing into a limitation upon the right of subrogation, rather than a weighing of equities. In fact it seems hard to see how the defendant banks have any equities. They are under obligations, either contractual or imposed by law, to pay checks only upon genuine endorsements, and they are liable to make good any loss which results from payment on forged or unauthorized endorsements. How can it be said that they are subject to such liability and yet have an equitable right not to be held liable?

Somewhat kindred subjects are discussed in Mr. Garrison's article above referred to, and in "Suggestions for Handling Forgery Losses with a View to Preserving Salvage Rights" by Stevens T. Mason of Detroit, a member of our committee, published in the Insurance Counsel Journal for 1941, page 14. There are conflicting cases, but a good many of them have been decided against the surety companies (see *New York Title and Mortgage Co. v. Bank*, 51 Fed. (2d) 485 (CCA 8), 77 ALR 1052, and annotation page 1057) and they present a rather troublesome problem. The fact is that the problem has been made worse than it otherwise would be through the efforts of a number of the trial lawyers

for surety and insurance companies. It frequently occurs that the defense is in the hands of a lawyer who only nominally represents the bank, and actually represents the company which has written the bank's forgery bond. Every successful defense puts another limitation upon, or precedent against, the enforcement of subrogation rights. With all due respect to the great ability with which such defenses have been conducted on behalf of the banks, it seems a fair comment, in broad perspective, that the surety companies have contributed rather substantially to the limitation of their own subrogation rights.

In correspondence among the members of the committee and others, discussing the principles underlying these cases, the following questions have been raised:

> Doesn't this produce a result whereby the depositor can throw the loss one way or the other as suits his caprice, which is contrary to the premise upon which the whole law of subrogation is based? See 4 Williston on Contracts (Revised Edition, Williston and Thompson), Page 3620.
>
> Why are not the rights and liabilities of all parties fixed by the facts existing when a defalcation occurs? If the third party is liable to the obligee of the bond upon the application of legal principles to the facts, how can he escape liability merely because the obligee has bought insurance for protection against the same loss? If the insurance had not been taken out, the defendant bank would have the loss to bear. How does it acquire any equity because of insurance taken out by the person who suffers the loss, no part of the cost of which has been paid by the bank?
>
> Should not the test be in all cases: Was or was not the bond as written intended to protect the third party against whom subrogation is sought? If the bond was so intended, then the court should be free to balance the equities and determine where the loss should equitably fall.

We suggested in our preliminary report the possibility of providing some protection for the surety in the bond application. One of our members has submitted a proposed draft of a paragraph to be included in the application and bond, which illustrates this possibility better than a good bit of general discussion. In spite of what we said in our preliminary report, and have said in this report, with regard to the difficult problems of draftsmanship, we feel that we should submit it as a basis for discussion. It is quite likely that if anything of the kind is found practicable, the wording of the paragraph can be improved upon. We also recognize that in all probability there will be substantial practical objections (some of them from the Underwriting Departments). But unless something of the kind is done, we feel that we can safely prophesy that the surety companies are going to continue to lose a lot of cases in which they have what seem to be entirely justifiable subrogation claims.

The proposed paragraph to be inserted in the application is as follows:

> "In the event this application is granted and bond made in accordance herewith, such bond shall contain a stipulation, with which applicant on its part agrees to comply, as follows:
>
> " 'Should any loss occur during the period covered by this bond, for which the underwriter is liable to the insured under the terms hereof, and should such loss occur under such circumstances that the insured has, or is believed by underwriter to have, a valid claim against some other person, firm or corporation for the recovery of such loss then, instead of paying the insured the amount of such loss the underwriter shall have, and is hereby given, the right, at its option, to loan to the insured, without interest, an amount of money equal to such loss, repayable if and when a recovery is had from such other person, firm or corporation liable for such loss, and only to the extent of such recovery; and the insured shall, within a reasonable time, enter and expeditiously prosecute a suit or suits against such person, firm or corporation on such claim, at the expense and under the exclusive direction and control of underwriter; and the insured shall cooperate with underwriter in furnishing records, evidence, affidavits, and all data in its possession which underwriter believes pertinent in establishing such claims'."

As will be readily recognized, the provision is simply an advance requirement that the employer shall deal with the surety in accordance with the procedure approved in *Luckenbach v. McCahan Sugar Refining Co.*, 248 U. S. 139, 146-8. Such procedure is fairly common by agreement of the parties after the loss has occurred. But unfortunately in many instances the obligee of the fidelity bond is unwilling to enter into it, or to permit the surety to delay payment while the obligee goes to the trouble of attempting to enforce

its rights and claims against others. Hence the sureties in many instances, having no contractual right to insist upon such procedure or delay, are compelled to pay and rely upon their rights of subrogation, which, as the cases above cited illustrate, often prove illusory.

It seems necessary that the agreement, as contained in the application, should be carried into the bond form, so as to avoid any possible claim that such agreement is merged into and avoided by the provisions of the bond itself. Compare the provision of the policies involved in *First National Bank of Ottawa v. Lloyd's*, 116 Fed. (2d) 221 (CCA 7) set forth at page 224, as follows:

> "Each of the Registered Mail Underwriters' policies also provide that 'with respect to losses for which this company may be liable on property insured thereunder, while in transit by messenger to or from the Post Office * ** * shall attach as an excess policy covering only for the excess over any amount which may be recoverable from any other insurance * * *; but the amount of any such loss shall nevertheless be advanced promptly by this company and shall be refunded to this company * * * only as and when recovered by the insured from such other insurance."

The foregoing case is also reported in 132 ALR 599, with annotation following at page 607.

To avoid complicating the bond form by including a contingent agreement of this kind, possibly it would be just as effective to have the agreement set forth in the application and merely to refer to it in the bond and thereby confirm it, without restating it.

A similar remedy, which might prove effective under the law of some states, would be to take from the obligee at the time of writing the bond (either in the application form or by separate instrument), an assignment of all future claims against others for indemnity or recovery from losses arising under the bond. To the extent that such assignment of future claims is recognized as valid, it might give the sureties legal instead of merely equitable rights. *Grubnau v. Bank*, 124 Atl. (Pa.) 142. But it would be far from satisfactory for use throughout the country, because of the holdings in many states to the effect that even assignments made after the loss has occurred add nothing to the rights derived by subrogation. *Meyers v. Bank of America* (Calif.) 77 Pac. (2d) 1084.

Respectfully submitted,

FRANK M. COBOURN, *Chairman*
STEVENS T. MASON
CHARLES A. NOONE
HENRY W. NICHOLS
GUILLERMO DIAZ ROMANACH
PATRICK F. BURKE, *ex-officio*.
Members of Committee*

*Footnote: Your chairman and the remaining members of the committee wish to record their sorrow, and the loss of the committee and the Association, on account of the death of Mr. Wm. R. Eaton of Denver, announced in the April 1943 Journal. His friendly letters are missed. His counsel in the consideration of this report would, we are sure, have been most helpful.

Report Of Committee On Health And Accident Insurance

THIS Committee was appointed in December, 1941, after the White Sulphur Convention.

The report of the committee made in 1942 furnished information as to the progress of the corresponding committee of the Insurance Section of the American Bar Association in its work of annotating a health and accident policy in general use.

We are now able to report that the work of annotating the health and accident policy was completed and filed in July 1942.

The annotation consists of 80 legal cap mimeographed sheets containing thousands of citations of health and accident insurance cases. A copy may be obtained from the secretary of the American Bar Association without charge. It is a splendid and extremely helpful index to the health and accident insurance cases.

No special matters have been referred to the committee for attention and in view of the work of the American Bar Committee no independent task has been undertaken by the Committee.

Respectfully submitted,

FRED S. BALL, JR., *Chairman*
ROBERT H. SYKES
ARTHUR L. AIKEN
GERALD T. FOLEY
ROBERT P. HOBSON
ALLAN E. BROSMITH.

Report of The Practice And Procedure Committee

YOUR Committee on Practice and Procedure has, for the past two years, been engaged in an extensive study of the Rules of Civil Procedure for the District Courts of the United States for the purpose of discovering those portions of the rules which may need amendments and additions.

As a result of that study, the committee reports to the International Association of Insurance Counsel that amendments to Rules 6, 14, 34, 36, 49, 52, 58, 59, 62 and 73, in the respects referred to in the attached memorandum are recommended.

We further report that the Supreme Court's Advisory Committee is now considering amendments and additions to the Rules to be presented to the Supreme Court for action, at the opening of the October session. We recommend that the Committee be authorized to bring this report to the attention of the Advisory Committee.

Respectfully Submitted,

WILBUR E. BENOY, *Chairman*
CHARLES H. GOVER
CLARENCE W. HEYL
LON O. HOCKER
WILLIAM G. PICKREL
PRICE H. TOPPING
F. G. WARREN
FORREST BETTS
GEORGE J. COOPER
LESLIE P. HEMRY
ROBERT P. HOBSON
DOUGLAS HUDSON
EARL S. HODGES
ROBERT H. JAMISON
DAVID J. KADYK
CHARLES E. PLEDGER, JR.
MORRIS E. WHITE
JAY SHEREFF
PAT EAGER, JR., *ex-officio*
Committee on Practice and Procedure.

* * *

RULE 6—TIME.

Rule 6 (b). Attention is called to the construction of this rule in *Orange Theatre Corp., v. Amusement Corp.*, 130 Fed. (2d) 185, where a default judgment was entered even though the parties had agreed by stipulation to an enlargement of the time. Phraseology of the rule justifies the construction but we recommend that there be added to Rule 6 (b) a provision allowing parties to extend the time by stipulation to be signed and filed in court before the expiration of the period originally prescribed but with proper provision to prevent unwarranted delay.

* * *

RULE 14—THIRD-PARTY PRACTICE.

We feel that this rule has received a construction from the certain courts contrary to the intent of the drafters of the original rule and much confusion has arisen among the district courts on the question of necessity for the existence of jurisdictional facts as regards new third-party defendants and as to whether or not the plaintiff may refuse to replead against the new third-party defendant.

As to the jurisdictional questions, certain courts have disregarded the provisions of both Rules 82 and 13 (a). Jurisdiction has been assumed in a number of cases contrary to the intent of Rule 82,[1] while some courts have taken the contrary view with reference to both jurisdiction and venue.[2]

With regard to the necessity of the plaintiff repleading against a third party defendant, the courts have likewise divided. Some have held that the attitude of the plaintiff in such matters is immaterial[3] while a con-

[1] *Tullgren v. Jasper*, 27 Fed. Sup. 413.
Crum v. Appalachian Power, 27 Fed. Sup. 138.
Gray v. Hartford Accident and Indemnity Co., 31 Fed. Sup. 299.
Morrell v. United Air Lines Corp., 29 Fed. Sup. 757.
United States v. Pryor et al, 2 F.R.D. 382.
John N. Price and Son v. Maryland Casualty Co., 2 F.R.D. 408; and see:
Address of Hon. Alexander Holtzoff, Report of Proceedings at Detroit meeting of Insurance Section of American Bar Association, pp. 265, 267.
Address on "Third Party Practice" by L. J. Carey, p. 272, same report.
Address "Expanding Federal Jurisdiction under Third Party Practice" by Lon Hocker, Jr., Insurance Counsel Journal for July, 1942, p. 32.

[2] *King v. Shepherd*, 26 Fed. Sup. 357.
Lewis v. United Air Lines, 29 Fed. Sup. 112.
Neirbo Co. v. Bethlehem Ship Building Corp., 308 U. S. 165; 84 L. ed. 167.
See, also addresses referred to in Foot Note 1.

[3] *Gray v. Hartford Accident and Indemnity Co.*, 31 Fed. Sup. 299.

trary result has been reached in other decisions.[4]

To obviate these questions we submit the following:

RULE 14—THIRD-PARTY PRACTICE

(a) WHEN DEFENDANT MAY BRING IN THIRD PARTY. Before the service of his answer a defendant may move ex parte or, after the service of his answer, on notice to the plaintiff, for leave as a third-party plaintiff to serve a summons and complaint upon a person not a party to the action *who is subject to the jurisdiction of the Court and*[5] who is or may be liable to him or to the plaintiff for all or part of the plaintiff's claim against him. If the motion is granted and the summons and complaint are served, the person so served, hereinafter called the third-party defendant, shall make his defenses as provided in Rule 12 and his counterclaims and cross-claims against the plaintiff, the third-party plaintiff, or any other party as provided in Rule 13. The third-party defendant may assert any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant is bound by the adjudication of the third-party plaintiff's liability to the plaintiff, as well as of his own to the plaintiff or to the third-party plaintiff. The plaintiff may amend his pleadings to assert against the third-party defendant any claim which the plaintiff might have asserted against the third-party defendant had he been joined originally as a defendant. A third-party defendant may proceed under this rule against any person not a party to the action who is *subject to the jurisdiction of the court and who is*[5] or may be liable to him or to the third-party plaintiff for all or part of the claim made in the action against the third-party defendant. *The court shall, where necessary, require a plaintiff or a defendant to replead against such third party.*[5]

RULE 34—DISCOVERY AND PRODUCTION OF DOCUMENTS AND THINGS FOR INSPECTION, COPYING, OR PHOTGRAPHING.

Whether or not originally so intended, several of the courts have adopted the view that this rule authorized the courts to order produced for inspection and for copying confidential investigation files procured by a party or his attorney in connection with his investigation of, and preparation for trial of, the case[1]; and authorized the court to require a diligent defendant to disclose the names and addresses of witnesses to an accident procured by defendant's investigator.[2]

As shown by the authorities collated in the addresses referred to in foot note[3] other courts have taken the opposite view. An amendment to the rule should put these doubts at rest.

We propose an amendment to the rule as suggested by Mr. Walter O. Schell of the Los Angeles Bar in the following language:

"RULE 34—DISCOVERY AND PRODUCTION OF DOCUMENTS AND THINGS FOR INSPECTION, COPYING, OR PHOTOGRAPHING.

Upon motion of any party showing good cause therefor and upon notice to all other parties the court in which an action is pending may[1] order any party to produce and permit the inspection and copying or photographing, by or on behalf of the moving party, of any designated documents, papers, books, accounts, letters, photo-

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[4] *Satink v. Township*, 31 Fed. Sup. 229.
Delano v. Ives, 40 Fed. Sup. 672.
Whitmire v. Partin, 2 F.R.D. 83.
See addresses referred to in Foot Note 1.

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[5] Added new matter is underscored; nothing is deleted.

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[1] *Revhim v. Chapman*, 2 F.R.D. 361.
Bough v. Lee, 28 Fed. Sup. 673.
Price v. Levitt, 29 Fed. Sup. 164.
Colpak v. Hetterick, 40 Fed. Sup. 350.

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[2] *State v. Pan-American Bus Lines*, 1 F.R.D. 213.
Stern v. Exposition Greyhound, Inc., 1 F.R.D. 696.
Kenealy v. Texas Co., 29 Fed. Sup. 502.

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[3] For addresses dealing with this particular subject reference may be had to:
Address of Walter O. Schell, Report of Proceedings of the Section of Insurance Law at the Detroit meeting (1942-43) of the American Bar Association, p. 278.
Address of Hon. Martin Convoy in the Report of Proceedings of the Section of Insurance Law at the Indianapolis meeting (1941-42), pp. 144, 146.
Address of Hon. Alexander Holtzoff of the Department of Justice from the Report of Proceedings of the Section of Insurance Law at the Detroit meeting, pp. 265, 268.

graphs, objects, or tangible things, not privileged,[4] and which are in his possession, custody or control, *provided the same would be legally admissible in evidence in the action for any purpose other than solely as an admission or as an impeachment of the witness*[5] or[2] order any party to permit entry upon designated land or other property in his possession or control for the purpose of inspecting, measuring, surveying, or photographing the property or any designated relevant object or operation thereon. The order shall specify the time, place and manner of making the inspection and taking the copies and photographs and may prescribe such terms and conditions as are just.

The term 'privileged,' as used in this rule, shall be deemed to include the results of any investigation made by any party to an action or anyone on his behalf, for the purpose of ascertaining any facts material to said action or for the purpose of preparation for trial thereof.[5]

RULE 36—ADMISSION OF FACTS AND OF GENUINENESS OF DOCUMENTS.

Rule 36 (a) fails to incorporate therein any protection as against admission as to the genuineness of documents which may be privileged from production, as is specifically provided for in connection with the taking of depositions. (See Rule 26 (b)). Neither does this Rule provide any means whereby an appeal may be made to the court to determine whether or not such a document may be relevant or privileged. Some courts have declined to entertain motions to vacate a request for admissions, or to entertain any proceeding to determine the propriety of such requests.[1] Other courts have taken a contrary attitude and have entertained motions to vacate or suppress such a request.[2]

We recommend that Rule 36 (a) be so amended as to exclude the right to request the genuineness of documents which may be privileged, and that a proceeding be incorporated therein authorizing the party upon whom the request is made to apply to the court by motion for the determination of all questions of relevancy and privilege, in the same manner as objections to interrogatories are provided for in Rule 33.

RULE 49—SPECIAL VERDICTS AND INTERROGATORIES.

Rule 49 (a) provides that the court "may" require a jury to return "only a special verdict" and Rule 49 (b) provides that the court "may" submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more issues of fact, the decision of which is necessary to a verdict.

The purpose of the interrogatories provided for in connection with a general verdict is to give either party the right to demand, uninfluenced by the action of the court, an answer upon a controlling issue without regard to the general verdict.[1]

While the court should have power, answerable only to a reviewing court, to determine whether proposed interrogatories call for answers to controlling issues of fact, the right to have the jury return a verdict on special issues of fact should not be denied.[2]

We suggest amendment of the first sentence of Rule 49 (b) as follows:

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[4]"which constitute or contain evidence material to any matter involved in the action" deleted.

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[5]Underscoring added.

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[1]*Nekrasoff v. United States Rubber Co.*, 27 Fed. Sup. 953.
Modern Food Process Co. v. Provision Co., 30 Fed. Sup. 520.
Van Horne v. Hines, 31 Fed. Sup. 346.

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[2]*Momand v. Paramount Pictures Distributing Co.* 36 Fed. Sup. 568.
Booth Fisheries Corp. v. General Foods Corp., 27 Fed. Sup. 268.
Sulzbacher v. Travelers Ins. Co., 2 F.R.D. 491.

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[1]Walsh v. Thomas' Sons, 91 O. S. 210, 216; 110 N. E., 454. In Ohio practice special findings of fact inconsistent with the general verdict control the latter and the court is obliged to give judgment accordingly. §11,420-18, G. C.
For Ohio Practice, where submission is mandatory, see Address of Wilbur E. Benoy on "Special Verdicts and Interrogatories" in report of proceedings of Section of Insurance Law at the Indianapolis meeting (1941-42) of the American Bar Association, p. 299; Insurance Counsel Journal, October, 1941, p. 21.

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[2]*In Moyer v. Aetna Life Ins. Co.*, 126 Fed. (2d) 141, the trial court, under this rule, refused to submit special interrogatories to the jury giving as his reason: "They were refused because they might be confusing, because they were all covered in the general charge of the court." The Circuit Court of Appeals held that there was no error, illustrating the necessity for the change in the language of the section.

"The court *upon its own motion may or upon request of a party shall* submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon controlling issues of fact the decision of which is necessary to a verdict."[3]

RULE 52—FINDING BY THE COURT.

RULE 58—ENTRY OF JUDGMENT.

Rule 58 provides for entry of judgment immediately upon the return of verdict by the jury (with certain exceptions) and provides that the notation of a judgment in the civil docket constitutes the entry of the judgment.

Rule 52 (b) provides that the court may amend its findings or make additional findings and amend the judgment on motion of a party made not later than ten days after entry of judgment.

The difficulties incident to the entering of judgment before motion for new trial, and similar motions provided by Rule 52 (b) are disposed of, are well illustrated in the recent decision of *Leishman v. Associated Wholesale Electric Co.*, Supreme Court Law Ed. Advance Opinions, p. 495, rendered on Feb. 15, 1943. Error of the lower court in the interpretation and disposition of a motion filed under Rule 52 (b) required reversal of the judgment below dismissing an appeal.

The rules should be so specific that such procedural questions, which accomplish nothing but added expense to our clients, should be avoided.

We recommend that the above rules, and all necessary relevant rules, be amended so as to require the disposition of all motions before judgment is entered.

Many states, some of which are indicated in the foot notes, provide that when a motion of a new trial is filed within the time permitted, the judgment shall be entered only after the court has disposed of the motion for new trial, or such other motions as may have been rightfully filed; but upon the overruling of such motions, judgment shall be immediately entered.[1]

RULE 59—NEW TRIALS.

Rule 59 (a) deals with "grounds" for a new trial specifying such grounds as "(1) in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the United States; and, (2) in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in suits in equity in the courts of the United States."

We believe that the grounds for new trials should be specifically set forth in the Rules. In Ohio grounds for motion for new trial are specifically set forth in the statute.[1]

In the Constitutional Amendments of 1912, in Ohio, appeals *de novo* to the Courts of Appeal were granted "in the trial of chancery cases."[2] The Appellate Courts ever since have spent much time in many a case determining whether the case was a "chancery case." They have searched back into the fundamentals of Chancery Jurisdiction. Much of our clients money has been wasted in procedural questions.[3] Because of the phraseology used in this rule, in time, similar searches will be required in order to ascertain what were "the reasons for which new trials have heretofore been granted in actions at law in the courts of the United States;" and what were the "reasons for which rehearings have heretofore been granted in suits in equity in the courts of the United States." In Ohio we find that the causes for new trial specified in the statute adequately fit both law and equity cases. We therefore recommend that the causes for new trial, both in actions at law and suits in equity, be specifically stated in the Rules.

RULE 62—STAY OF PROCEEDINGS TO ENFORCE JUDGMENT.

Under Rule 62, subdivisions (b), (d) and (f), the District Court has the express power to stay execution pending the disposition of a motion for new trial. However, the rule

[3]State statutes using similar mandatory language:
Conn. Gen. Stat. §5658.
Ill. Smith-Hurd Revised Stat. ch 110 §189.
Kan. Gen. Stat. 1935, §60—2918.
Ky. Carrolls Civil Code §327.
Mich. Compiled Laws 1920 §14290.
Ohio Gen. Code §11420-17.

[1]Ill. Smith-Hurd's Rev. Stat. ch. 110 §192.
Ohio §11599, 11600, G. C.
Mass. Gen. Laws, ch. 231 §127.
Wash. Rem. Rev. Stat. §431.
Wyo. Rev. Stat. 89-2601.

[1]G. C. 11576.

[2]Art. 4 §6.

[3]See 2 Ohio Jurisprudence, pp. 78-128. A constitutional amendment is now being proposed to dispense with this phraseology.

does not provide for a stay beyond the disposition of the motion for new trial.

Sub-division (d) provides that a supersedeas bond may be given *at or after* the time of filing the notice of appeal, or of procuring the order allowing the appeal, as the case may be. Consequently, under the rule, there is a period between the determination of the motion for new trial and the filing of the notice of appeal during which there is no express provision for a stay of execution.

In most instances, it is not practical to file the notice of appeal and stay bond upon the denial of the motion for new trial. Some express provision should be made giving the District Court discretionary power to stay execution, either with or without the filing of supersedeas bond, upon such conditions as it deems equitable during the period permitted by law for filing notice of appeal.

RULE 73—APPEAL TO A CIRCUIT COURT OF APPEALS.

Rule 73 (a) can be clarified by more explicitly[1] defining the power of a District Court Judge after an appeal has been taken to the Circuit Court of Appeals. We recommend that the following sentence be inserted between the first and second sentence of Rule 73 (a):

"After the notice of appeal is filed, the District Court has jurisdiction in the matter only to the extent stated or necessarily implied in Rules 73, 75 and 76; for all other purposes the Appellate Court has exclusive jurisdiction."

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[1] *U. S. v. Forness*, 2 F.R.D. 160.
Treasure Imports v. Amdur. 127 Fed. (2d) 3 (C. C. A. (2d) 1942).

Report Of The Home Office Counsel Committee

THE Home Office Counsel Committee has not met, has had no problems referred to it, has created no problems of its own, and has done nothing. This is as things are, as they always have been, and, it would seem, as they should be. One member of the Committee has suggested that, "it would be a shame to spoil the work of all previous committees to have our Committee make a report of any kind." The current membership are wondering if any useful purpose is served by perpetuating the Committee. It would seem that if, as and when a problem or problems arise which should be considered by members of the Association connected with the home office legal departments, a special committee might be created by the President or the Executive Committee. We therefore rcommend to the Association the abolition of this Committee.

Respectfully submitted,

LESLIE P. HEMRY, *Chairman*
PATRICK F. BURKE
RAYMOND N. CAVERLY
FLETCHER B. COLEMAN
HUGH D. COMBS
BERKELEY COX
VICTOR C. GORTON
JOHN A. LUHN
FRANKLIN J. MARRYOTT
DANIEL MUNGALL
ROYCE G. ROWE
PRICE H. TOPPING.

Members in Attendance at Annual Meeting

Aiken, Arthur L., Fort Wayne, Ind.
Albert, Milton A., Baltimore, Md.
Anderson, James Alonzo, Shelby, Ohio.
Andrews, John D., Hamilton, Ohio.

Baier, Milton L., Buffalo, N. Y.
Baker, Harold G., East St. Louis, Ill.
Ball, Fred S. Jr., Montgomery, Ala.
Barber, A. L., Little Rock, Ark.
Barnes, George Z., Peoria, Ill.
Barth, Philip C., Buffalo, N. Y.
Bartlett, Thomas N., Baltimore, Md.
Barton, John L., Omaha, Neb.
Baylor, F. B., Lincoln, Neb.
BeGole, Ari M., Detroit, Mich.
Benoy, Wilbur E., Columbus, Ohio.
Bloom, Herbert, Chicago, Ill.
Breen, John M., Chicago, Ill.
Brewer, Edward C., Clarksdale, Miss.
Brosmith, Allan E., Hartford, Conn.
Brown, Franklin R., Buffalo, N. Y.
Brown, Garfield W., Chicago, Ill.
Brown, Oscar J., Syracuse, N. Y.
Bryan, William Lyle, Atlanta, Ga.
Burke, Patrick F., Philadelphia, Pa.
Burns, George, Rochester, N. Y.

Campbell, William T., Philadelphia, Pa.
Carey, L. J., Detroit, Mich.
Cary, George H., Detroit, Mich.
Carroll, Harold J., Minneapolis, Minn.
Caverly, Raymond N., New York, N. Y.
Cholette, Paul E., Grand Rapids, Mich.
Christovich, Alvin R., New Orleans, La.
Clifford, Clark M., St. Louis, Mo.
Cobourn, Frank M., Toledo, Ohio.
Coen, Thomas M., Chicago, Ill.
Cole, Charles J., Toledo, Ohio.
Coleman, Fletcher B., Bloomington, Ill.
Conway, James D., Hastings, Neb.
Cooper, Harry P. Jr., Indianapolis, Ind.
Cope, Kenneth B., Canton, Ohio.
Crawford, Milo H., Detroit, Mich.
Cull, Frank X., Cleveland, Ohio.

Daniel, Todd, Philadelphia, Pa.
DeLacy, G. L., Omaha, Neb.
Denmead, Garner W., Baltimore, Md.
Dodson, T. DeWitt, New York, N. Y.
Dodd, Lester P., Detroit, Mich.
Doyle, Lewis R., Lincoln, Neb.
Drake, Hervey J., New York, N. Y.
Durham, F. H., Minneapolis, Minn.

Eager, Pat H., Jr., Jackson, Miss.
Ely, Wayne, St. Louis, Mo.

Faude, John P., Hartford, Conn.
Field, Elias, Boston, Mass.
Fields, Ernest W., New York, N. Y.
Folts, Aubrey, Chattanooga, Tenn.
Ford, Byron Edward, Columbus, Ohio.
Fraser, William C., Omaha, Neb.
Freeman, William H., Minneapolis, Minn.

Gallagher, Donald, Albany, N. Y.
Gambrell, E. Smythe, Atlanta, Ga.
Gillette, Lewis R., Minneapolis, Minn.
Gillespie, Louis F., Springfield, Ill.
Gooch, J. A. (Tiny), Fort Worth, Texas.
Gorton, Victor C., Chicago, Ill.
Grelee, Robert C., Madison, Wisc.
Grooms, Hobart, Birmingham, Ala.
Grubb, Kenneth P., Milwaukee, Wisc.
Guthrie, Thomas J., Des Moines, Iowa.

Hassett, William D., Buffalo, N. Y.
Hayes, Gerald P., Milwaukee, Wisc.
Hemry, Leslie P., Boston, Mass.
Henderson, Joseph W., Philadelphia, Pa.
Heneghan, George E., St. Louis, Mo.
Henry, E. A., Little Rock, Ark.
Heyl, Clarence W., Peoria, Ill.
Hobson, Robert P., Louisville, Ky.
Hocker, Lon Jr., St. Louis, Mo.
Hocker, Lon O., St. Louis, Mo.
Hodges, Earl S., Springfield, Ill.
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Holt, Francis M., Jacksonville, Fla.
Hudson, Douglas, Fort Scott, Kansas.

Jackson, H. Clair, Kalamazoo, Mich.
Jainsen, Wilson C., Hartford, Conn.
Johnson, F. Carter Jr., New Orleans, La.
Johnston, John E., Greenville, S. C.

Kadyk, David J., Chicago, Ill.
Kelly, Ambrose B., Chicago, Ill.
King, Bert, Wichita Falls, Texas.
Kirk, A. D., Owensboro, Ky.
Kitch, John R., Chicago, Ill.
Kluwin, John A., Milwaukee, Wisc.
Knight, Harry S., Sunbury, Pa.
Knight, Wm. D., Rockford, Ill.
Knowles, William F., Kansas City, Mo.
Kottgen, Hector, New York, N. Y.
Kristeller, Lionel P., Newark, N. J.

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Leftwich, Charles W., Columbus, Ohio.
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LeViness, Charles T. III, Baltimore, Md.

Lloyd, Frank T., Jr., Camden, N. J.
Lloyd, L. Duncan, Chicago, Ill.
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Manier, Will R., Jr., Nashville, Tenn.
Marryott, Franklin J., Boston, Mass.
Mayne, Walter R., St. Louis, Mo.
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Niehaus, John M. Jr., Peoria, Ill.
Noll, Robert M., Marietta, Ohio.
Norman, Frank S., New Orleans, La.

O'Hara, James M., Utica, N. Y.
Orr, Charles N., St. Paul, Minn.
O'Sullivan, J. Francis, Kansas City, Mo.
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Parker, Leo B., Kansas City, Mo.
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Roberts, H. Melvin, Cleveland, Ohio.
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Schwartz, Wilbur C., St. Louis, Mo.
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Smith, Sylvester C., Newark, N. J.
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Stewart, Joseph R., Kansas City, Mo.
Stichter, Wayne E., Toledo, Ohio.
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Sweitzer, J. Mearl, Wausau, Wisc.

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Thompson, Grover C., Lexington, Ky.
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Thurman, Harold C., Oklahoma City, Okla
Todd, W. B., Fort Worth, Texas.
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Topping, Price H., New York, N. Y.
Townsend, Mark, Jr., Jersey City, N. J.

Van Fleet, Herbert, Joplin, Mo.

Warren, F. G., Sioux Falls, S. D.
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White, Lowell, Denver, Colo.
White, Morris E., Tampa, Fla.
Winkler, John H., Columbus, Ohio.
Woodward, Fielden, Louisville, Ky.

Yancey, George W., Birmingham, Ala.
Young, Robert F., Dayton, Ohio.

Zelt, Wray G., Jr., Washington, Pa.
Zurett, Melvin H., Rochester, N. Y.

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Crump, Guy Richards, Los Angeles, Calif
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Godehn, Paul M., Chicago, Ill.
Gordon, Harold, Chicago, Ill.
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Menegay, Lester A., New York, N. Y.
Moore, Robert, Chicago, Ill.
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Stewart, James G., Cincinnati, Ohio.
Stewart, Ralph Jr., Salt Lake City, Utah.
Swisher, W. C., Chicago, Ill.
Touchstone, O. O., Dallas, Texas.
Tressler, David L., Chicago, Ill.
Voorhees, John H., Sioux Falls, S. D.
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Whitelaw, M. H., Jacksonville, Fla.
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Wise, W. B., New York City, N. Y.

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Carey, Miss Barbara L., Detroit, Mich.
Carey, Miss Geraldine M., Detroit, Mich.
Carey, Miss Janet A., Detroit, Mich.
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Christovich, Billy, New Orleans.
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McGugin, Mrs. Dan Jr., Nashville, Tenn.
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McAlister, Miss Patricia, Washington, Pa
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Powell, Mrs. Arthur G., Atlanta, Ga.
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Remke, Mrs. Richard, Cincinnati, Ohio.
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Stewart, Mrs. Don, Lincoln, Neb.
Stichter, Mrs. Wayne, Toledo, Ohio.
Sweitzer, Mrs. J. M., Wausau, Wisc.
Thurman, Mrs. Hal C., Dallas, Texas.
Toohy, Mrs. C. M., Detroit, Mich.
Topping, Mrs. Price H., New York City.
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Woodward, Mrs. Fielden, Louisville, Ky.
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